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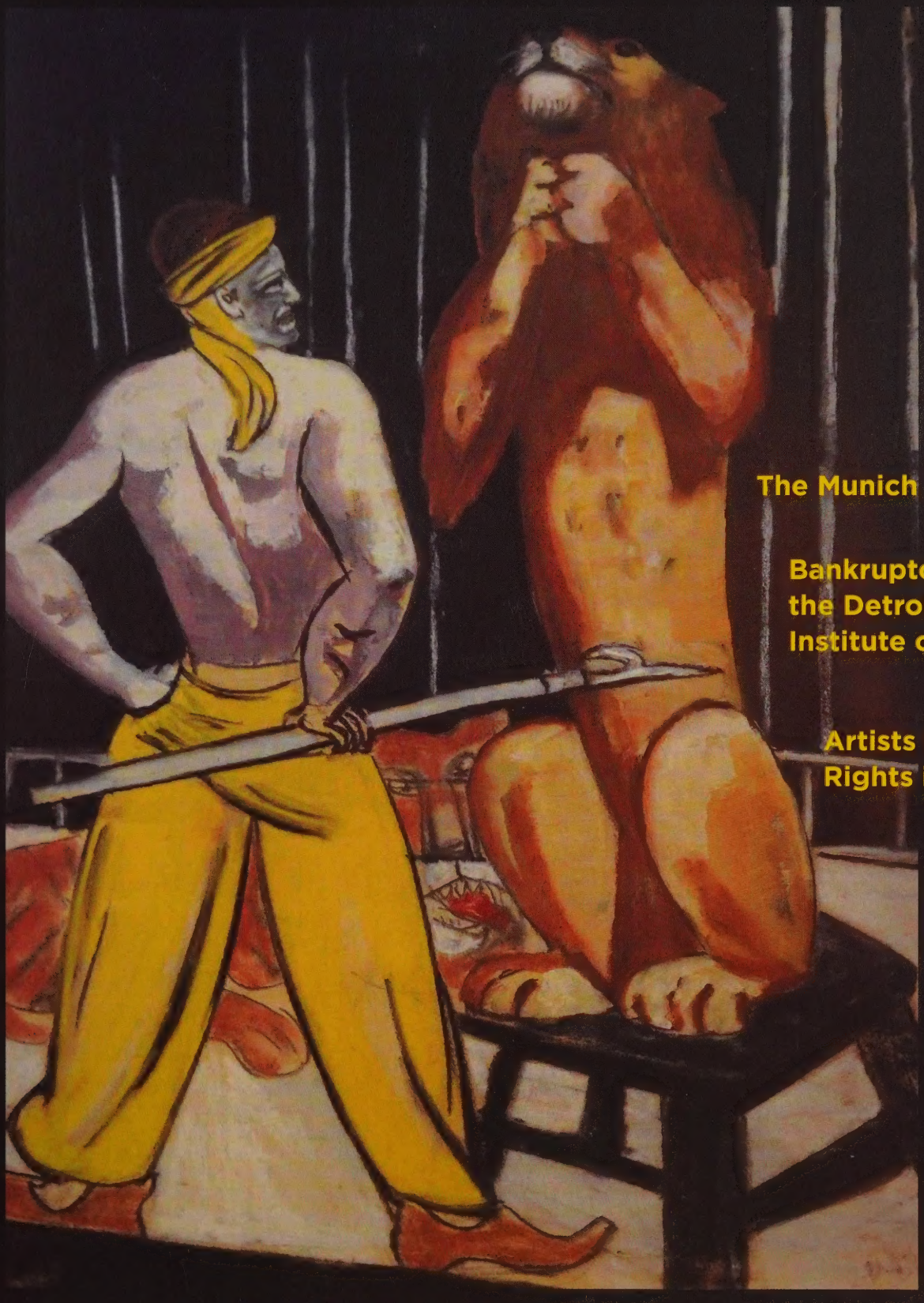

The Munich Art Fund

Bankruptcy and the Detroit Institute of Arts

Artists Resale Rights in the U.S.

INCORPORATING STOLEN ART ALERT®

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COVER: MAX BECKMANN. *Lion Tamer,* 1930. Gouache and pastel on paper. 90 x 59.3cm (35 3/8 x 23 3/8 in.). © 2014 Artists Rights Society (ARS), New York / VG Bild-Kunst, Bonn. See article on p. 3.

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THE TANGLED WEB OF A MUNICH ART TROVE

It was only by chance, during a routine border inspection on a train from Switzerland to Germany in September 2010, that customs officials found Cornelius Gurlitt with 9,000 euros in his pocket and no existence in government databases. That random inspection, however, set off a chain of events that is still reverberating on both sides of the Atlantic.

Some of the details are, by now, well known: the revelation that 81-year-old Cornelius is the son of Dr. Hildebrand Gurlitt, a German art dealer/art historian/collector who aided the Nazis; the discovery of an enormous cache of mostly unaccounted for artworks—some clearly looted—in Cornelius' modest Munich apartment; the confiscation of 1,406 items from the apartment, including 1,280 artworks, in February 2012 by the Bavarian State Prosecutor's Office (SPO) pending investigation into tax evasion and possible other crimes; and the incredible failure of authorities to make the find public for more than a year and half.

Were it not for an apparent whistleblower, it *still* might not be public. The German magazine *Focus* broke the story in early November 2013, forcing the government to call a news conference on November 5 **(FIG. 1)**. Outrage soon followed, with claimants and other individuals and organizations calling for total transparency regarding the seized works and speedier provenance research. While transparency has not yet been achieved—to date, only 458 of the 1,280 artworks found in Munich have been posted on the German government site (www.lostart.de)—some progress has been made on provenance research. To augment the lone researcher who had been tasked in secret by the Augsburg Public Prosecutor's office, an international provenance research team (the Schwabing Art Trove Task Force) has now been assembled. It includes one American—Jane Milosch of the Smithsonian Institution. They do not have an easy job ahead.

Recently, an additional cache of 60 works was discovered in another Gurlitt home in Salzburg, Austria. As IFAR goes to press, however, neither German nor Austrian authorities have released any official information as to the exact contents of this new find, other than to say that it includes works by Picasso, Monet, Renoir, and other masters, none of which, we are assured without explanation, show evidence of having been looted.

Even if it turns out that works in Gurlitt's collection were looted, German law may protect him. As discussed in more detail below, the statute of limitations for a claim, generally speaking, runs out 30 years after the theft,

FIGURE 1. Some of the images from the Munich art trove shown at the government press conference, November 5, 2013.

whether or not the current owner acquired a contested work in "good faith."

The slowness of the German government's response and its (and Gurlitt's) apparent unwillingness to deal immediately with claimants, has led to the filing of the first of what may be many lawsuits in the United States. As IFAR went to press, David Toren, an elderly New York resident and heir to the collection of David Friedmann, the pre-World War II owner of Max Liebermann's *Two Riders on the Beach* **(FIG. 2)**, filed suit in Federal District Court in Washington, D.C.[1] not against Gurlitt, but against the Federal Republic of Germany and the Free State of Bavaria. The German and Bavarian governments will likely try to get the case dismissed on jurisdictional grounds. Stay tuned.

. . . . .

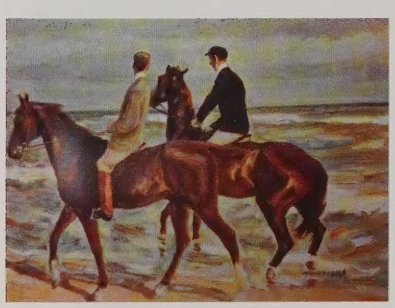


FIGURE 2. MAX LIEBERMANN. ***Two Riders on the Beach,* 1901. Oil on canvas. 72 x 92 cm (28 ⅜ x 36 ¼ in.).**

By all accounts, Cornelius Gurlitt is an eccentric—an elderly, single man who is deeply attached to an art collection he inherited upon his mother's death in 1967 and which he has kept sequestered ever since. He has apparently never worked, and has funded his modest lifestyle by occasionally selling a piece of art.

The Munich art trove consists of works acquired by Gurlitt's father, Dr. Hildebrand Gurlitt (1895-1956), who obtained at least some of the works through illegitimate channels. Although not a member of the National Socialist Party and part Jewish himself, Hildebrand Gurlitt was one of the art dealers authorized by the Nazis to sell and trade so-called "degenerate" art works—mainly late 19th and 20th Century avant-garde works that the Nazis confiscated not only from Jews, but also, legally, from German museums and other public collections in 1937-1938. Although abhorrent to Nazi tastes and ideals, degenerate works had a market value elsewhere, and the Nazis permitted Hildebrand and a few other dealers to sell them on the international market to procure much-needed foreign currency. It was a lucrative business. At the same time, they mandated that Hildebrand purchase approved works for Hitler's proposed Führer Museum in Linz, Austria.

It is Hildebrand Gurlitt's Nazi associations that have cast a long shadow on the contents of his son's Munich art trove. In the interest of establishing legitimate ownership, the Bavarian State Prosecutor's Office now has the difficult task of documenting a clear provenance for each work Cornelius possessed.

"It is Hildebrand Gurlitt's Nazi associations that have cast a long shadow on the contents of his son's Munich art trove."

IFAR has done its own research into the activities of Hildebrand Gurlitt during the war. We have consulted the National Archives and Records Administration in Washington, D.C., which has over 15 million pages of documentation related to Holocaust-era assets, some of which are searchable online.[2] Among the documents that we have been consulting are the: *Holocaust Era Assets Restitution Claim Records, Property Declarations; WWII OSS Art Looting Investigation Unit Reports; Consolidation Interrogation Reports (CIR); Roberts Commission-Protection of Historical Monuments; Repositories and Art Looting Investigation File;* and the *Claim File of Hildebrand Gurlitt A1-495.* We have also

1 *Toren v. Federal Republic of Germany, et al.*, No. 14-cv-359-ABJ (D.D.C. filed Mar. 5, 2014).

2 Greg Bradsher, "Turning History into Justice: Holocaust-era Assets Records Research and Restitution March 1996-March 2001," War and Civilization lecture held at the University of North Carolina, Wilmington, NC, April 19, 2001.

spent considerable time cross-referencing works in Gurlitt's collection that have been posted on the SPO's aforementioned Lost Art website against a 1941-1942 inventory of the thousands of degenerate art works that were removed from German museums by the Reichsministry for Public Enlightenment and Propaganda.[3]

From these primary sources, it has been possible to sketch a tentative, though very incomplete picture of Gurlitt's wartime activity as it relates to the Munich art trove. Specific documents include Gurlitt's own sworn "Declaration of Property Recovered from an Area Occupied by German Forces," in which he petitioned the Aschbach Collecting Point (one of several collecting points for looted art set up by the Allies at the end of the war) for the recovery of his works, and other Allied documentation from the Collecting Point in Wiesbaden prepared by Theodore Heinrich, the Cultural Property Advisor to the Allied Command.

So, here is a brief summary—the first perhaps of many—of Hildebrand Gurlitt and some of the information IFAR has uncovered about the Munich art trove.

WHO WAS HILDEBRAND GURLITT?

A comprehensive account of Hildebrand Gurlitt's activities during World War II is difficult to compile since information related to him during the war is scattered, incomplete and complicated by the fact that he wasn't always truthful to his interrogators after the war. Although he had close Nazi associations, Gurlitt's role as an art dealer and his relationship to the Nazi party is far more complex than has been portrayed in the general press.

Hildebrand Gurlitt denied ever having been a Nazi.[4] And, although he profited greatly from sales of degenerate art, he was also a collector and champion of modern art. In 1925, after completing a doctorate in art history, Hildebrand became an art reporter for several German newspapers, and, shortly after, was appointed the Director of the City Museum of Art in Zwickau. He actively supported modern artists, particularly the German Expressionists, by exhibiting and purchasing their art, enriching the museum's collection. By 1930, members of the National Socialist Workers Party (NSDAP) engineered Hildebrand's dismissal on the basis of his modern art purchases. He then became the Director of the Kunsthalle in Hamburg, from where the Nazis dismissed him again in 1933, also for promoting modern art. Gurlitt then became an independent art dealer in Hamburg.[5]

> "By his own estimates given in a sworn statement to the Allied Command after the war, Hildebrand made about ten trips to Paris between 1941 and 1943, but he denied ever having handled Nazi-seized art."

According to the anti-Jewish Nuremberg Laws of 1935, Gurlitt was a "Mischling" of the "Second Degree" (a person with one Jewish grandparent),[6] and, as such, he was allowed to keep his German citizenship, but could experience other hardships. Nonetheless, in 1938, after the purge of degenerate art from German museums, Hermann Goering selected him to become one of the four official art

3 The Victoria and Albert Museum, UK has recently published a digital version of the typescript inventory of degenerate art works that were removed from German museums and art galleries by the German government. http://www.vam.ac.uk/__data/assets/pdf_file/0020/240167/Entartete_Kunst_Vol1.pdf

4 See, NARA, "Records Concerning the Central Collecting Points ("Ardelia Hall Collection"): Munich Central Collecting Point, 1945-1951: Interrogations: Statements of Art Dealers, Translation of Sworn Statement Written by Dr. Hildebrand Gurlitt," p. 84, www.fold3.com/image /270046012

5 See, Hildebrand Gurlitt's statement of October 3, 1946 to the Munich Collecting Point regarding the "Museum Linz." NARA "Records Concerning the Central Collecting Points ("Ardelia Hall Collection"): Munich Central Collecting Point, 1945-1951: Restitution Claim Records: Property Declarations: 0009-0139, p. 102; www.fold3.com/image/270055647/

6 The Reich Citizenship Law of September 15, 1935 and the First Supplementary Decree of November 14, 1935.

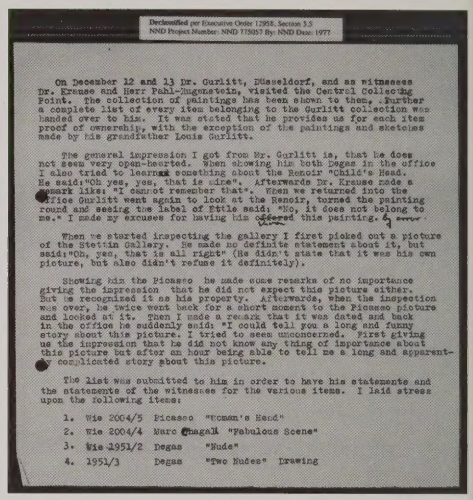
dealers permitted to sell degenerate art to foreign buyers. By 1941, he also was traveling to Paris to buy and sell art on the international art market. By his own estimates given in a sworn statement to the Allied Command after the war, he made about ten trips to Paris between 1941 and 1943, but he denied ever having handled Nazi-seized art.[7] He did, however, admit to profiting from the wartime art trade in France, estimating that his income jumped from 40,000 Reichsmark in 1941 to over 200,000 Reichsmark in 1943 on account of his art purchases.

"What to make of these contradictory statements, other than that Hildebrand apparently lied to the interrogators …?"

In 1942, after bombs destroyed his Hamburg gallery, Gurlitt moved to Dresden and by 1943 became one of the official Paris agents for Hitler's proposed museum in Linz under its second director, Hermann Voss. Gurlitt later insisted that this was preferable to being sent, due to his part-Jewish status, to do forced labor in the "Organization Todt".[8]

After his Dresden home was destroyed in the Allied bombings, Gurlitt and his family moved into the castle of Baron von Pöllnitz in Aschbach. When the war ended, he was kept there under house arrest and interrogated for his wartime activities. Interrogators confirmed that Gurlitt often used intermediaries to help him with his art transactions. Theo Hermsen, a Dutch art dealer in Paris, was a front for several purchases.[9] The investigation into Gurlitt's complicity in Hitler's proposed museum and library in Linz concluded that "the importance of Gurlitt as an agent for Linz seems to have been exaggerated … the quantity of his purchases is not very large and he seldom bought from private collectors …"[10]

Even directly after the war, the Allies were equivocal in their assessment of Gurlitt's activity, and reports about him conflicted. Gurlitt's art collection was seized and held for several years by the Allies (see below). An undated statement from the Wiesbaden Collecting Point following Gurlitt's inspection of his works that were sequestered there states that "Mr. Gurlitt does not seem very open-hearted" **(FIG. 3).**[11] Nevertheless, an inter-office memo from the Office of Military Government for Bavaria—Fine Arts and Archives Section—from 24 March 1947 stated: "This office is of the opinion he [Gurlitt] actually does not hide any illegal property. But, that of course, has to be checked on the spot." It ends with a directive to release his collection to him **(FIG. 4).**[12]



Declassified per Executive Order 12958, Section 3.5
NND Project Number: NND 775057 By: NND Date: 1977

On December 12 and 13 Dr. Gurlitt, Düsseldorf, and as witnesses Dr. Krause and Herr Pahl-Rugenstein, visited the Central Collecting Point. The collection of paintings has been shown to them. Further a complete list of every item belonging to the Gurlitt collection was handed over to him. It was stated that he provides us for each item proof of ownership, with the exception of the paintings and sketches made by his grandfather Louis Gurlitt.

The general impression I got from Mr. Gurlitt is, that he does not seem very open-hearted. When showing him both Degas in the office I also tried to learn something about the Renoir "Child's Head. He said:"Oh yes, yes, that is mine". Afterwards Dr. Krause made a remark like: "I cannot remember that". Then we returned into the office Gurlitt went again to look at the Renoir, turned the painting round and seeing the label of Ettle said: "No, it does not belong to me." I made my excuses for having him shown this painting.

When we started inspecting the gallery I first picked out a picture of the Stettin Gallery. He made no definite statement about it, but said:"Oh, yes, that is all right" (He didn't state that it was his own picture, but also didn't refuse it definitely).

Showing him the Picasso he made some remarks of no importance giving the impression that he did not expect this picture either. But he recognized it as his property. Afterwards, when the inspection was over, he twice went back for a short moment to the Picasso picture and looked at it. Then I made a remark that it was dated and back in the office he suddenly said: "I could tell you a long and funny story about this picture. I tried to seem unconcerned. First giving us the impression that he did not know any thing of importance about this picture but after an hour being able to tell me a long and apparently complicated story about this picture.

The list was submitted to him in order to have his statements and the statements of the witnesses for the various items. I laid stress upon the following items:

1. Wie 2004/5 Picasso "Woman's Head"
2. Wie 2004/4 Marc Chagall "Fabulous Scene"
3. Wie 2951/2 Degas "Nude"
4. 1951/3 Degas "Two Nudes" Drawing

FIGURE 3. Statement by the Wiesbaden Collecting Point.

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7 The text of Gurlitt's statement to the Allied Command signed on June 10, 1945 has been made available by the Bavarian State Prosecutors Office on the official Lost Art website. http://www.lootedart.com/web_images/pdf2013/

8 See, Statement of October 3, 1946, op. cit., footnote 5; www.fold3.com/image/2700556467/. The Organization Todt, named after its founder, Fritz Todt, an engineer, was responsible for much of the wartime construction in Germany.

9 NARA, "Records of the American Commission for the Protection and Salvage of Artistic and Historical Monuments in War Areas (The Roberts Commission), 1943-1946: Card File on Art-Looting Suspects, Compiled 1943 – 1946," p. 305. www.fold3.com/image/114/270110674/

10 NARA, "WWII OSS Art Looting Investigation Unit Reports, 1945-46: Consolidated Integration Reports (CIR) 4, Linz, Hitler's Museum and Library," p. 62. www.fold3.com/image/232002696/

11 NARA, "Records Concerning the Central Collecting Points ("Ardelia Hall Collection"): Wiesbaden Collection Point, 1945-1952: General Records, Collection Gurlitt," p. 45. www.fold3.com/image/231981385/

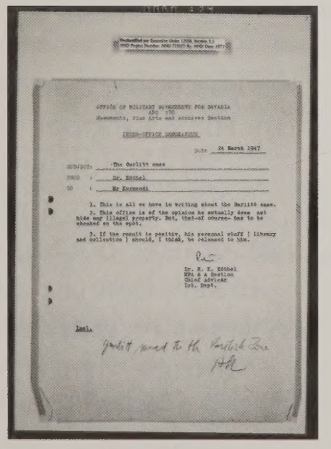
12 NARA, "Records Concerning the Central Collecting Points ("Ardelia Hall Collection"): Munich Central Collecting Point, 1945-1951: Restitution Claim Records Compiled 1945-1951: Property Declarations 0009-0139," p. 91. www.fold3.com/image/270055574/

WARTIME ACTIVITIES AND THE MUNICH TROVE

What light does Hildebrand Gurlitt's wartime collecting and dealing shed on the art trove found in his son's Munich apartment? In 1945, the Allies seized Gurlitt's art collection at the Neue Residenz in Aschbach and on June 10 of that year, Lieutenant Dwight McKay of the U.S. Third Army interrogated Gurlitt about his activities as a Nazi art dealer. The collection taken by the Allies comprised 117 paintings, 19 drawings and 72 decorative objects—far fewer than the 1,280 artworks recently seized in Munich, which begs the question of where, when and how Hildebrand acquired—or hid—all the additional works.

The works seized by the Allies included Max Liebermann's *Two Riders on the Beach* **(FIG. 2)**, claimed in the federal lawsuit just filed in Washington, D.C.; Marc Chagall's gouache *Allegorical Scene* **(FIG. 5)**; and Max Beckmann's *Lion Tamer,* also a gouache, of 1930 **(FIG. 6** and **JOURNAL COVER)**, which was recently sold by Cornelius Gurlitt at auction in Cologne (see discussion below).

Hildebrand's seized collection was stored at the Wiesbaden Collecting Point until 1950, when he applied for its return. On December 13, 1950, he submitted an annotated list of his collection as proof of ownership. He put a check next to 71 works that he claimed had been in his family's collection since 1933 and made a cross next to 68 modern works and objects that he said were acquired directly from the artists and did not come from Jewish collections. That month, the Allies returned all the works, with the exception of the Chagall and a Picasso titled *Portrait of a Woman with Two Noses,* which were made subject to further investigation. They were designated to return to France until Gurlitt sent a letter from the Lugano painter Karl Ballmer stating that he had given both paintings to Gurlitt as a gift in 1943 **(FIGS. 7A&B)**. That was deemed "sufficient proof" and both works were returned to him in January 1951. Curiously, on a list that Gurlitt prepared in 1945 when his works were initially



OFFICE OF MILITARY GOVERNMENT FOR BAVARIA
APO 170
Monuments, Fine Arts and Archives Section

INTER-OFFICE CORRESPONDENCE

DATE: 24 March 1947

SUBJECT: The Gurlitt case

TO: Dr. Rörtel

CC: Mr Roosevelt

1. This is all we have to writing about the Gurlitt case.

2. This office is of the opinion he actually drew out $100 in RM personally. Mrs. Gurlitt of course- has to be checked on this point.

3. If the result is positiv, his personal staff [illegible] and collection I should, I think, be released to him.

Dr. R. E. Rörtel
Chief, Section
Third Armies
Int. Dept.

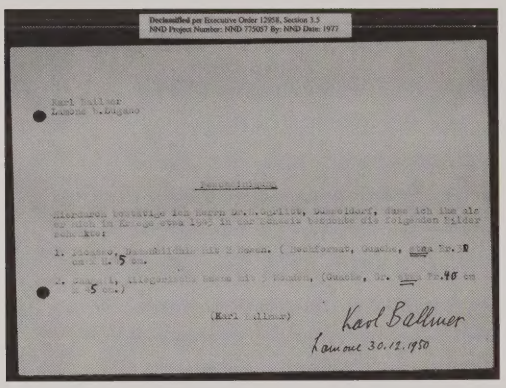
Encl.

Gurlitt moved to the Hartlieb Bau
HH

FIGURE 4. Inter-Office Memo authorizing return of property to Hildebrand Gurlitt, Office of Military Government for Bavaria, March 24, 1947.

FIGURE 5. MARC CHAGALL. *Allegorical Scene,* u.d. Gouache, on paper mounted on cardboard. 63 x 48 cm (25 x 19 in.).

FIGURE 6. MAX BECKMANN. *Lion Tamer,* 1930. Gouache and pastel on paper. 90 x 59.3 cm (35 ⅜ x 23 ⅜ in.) ©2014 Artists Rights Society (ARS), New York / VG Bild-Kunst, Bonn.



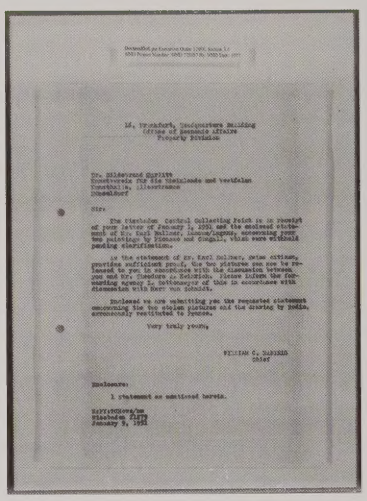


FIGURE 7A (left). Certificate from Karl Ballmer confirming his gift to Dr. H. Gurlitt, December 30, 1950. 7B (right). Letter from Office of Economic Affairs Property Division, January 9, 1951.

taken by the Allies from the castle in Aschbach, he had stated—presumably referring to the same Chagall and Picasso—that the Chagall had been an "old possession" of his sister's (who died in 1933) and that the Picasso was "bought from the artist, Paris 1942."[13] What to make of these contradictory statements, other than that Hildebrand apparently lied to the interrogators, especially in light of the fact that Savely Blumstein, a Latvian Jew who survived the Holocaust, registered an ownership claim on what seems to be the same Chagall in 1957, stating that the work had been taken by the Gestapo from the Blumstein home in Riga in 1941.[14]

The Picasso, as far as we know, is not among the paintings that surfaced in Munich.

For the most part, the artworks seized from Cornelius Gurlitt in 2012—far more than were seized from his father after the war—seem to be works on paper, predominantly lithographs and prints. But the cache also contains at least 50 paintings, as this is the number thus far posted on the SPO's website. This does not include the additional cache recently found in Salzburg.

Based on its initial investigation, the SPO has deemed 970 of these works to have a troubling provenance. Of them, 380 fall under the classification of degenerate works (many confiscated in the 1930s from German museums). While the term usually denoted modern art works—even those by major German artists like Max Beckmann and Otto Dix, degenerate art could also include works judged to be Jewish-Bolshevist in nature or rendered by Jewish artists, such as Max Liebermann or Marc Chagall . The remaining 590 (of the 970) works are currently being investigated as possibly Nazi-looted works. The latter are slowly being added to the www.lostart.de website, many with poor reproductions and all watermarked "Staatsanwaltschaft Augsburg". The SPO site makes clear that regulations limit the posting of a work to the Lost Art site unless the prosecutor's office believes "that the suspicion of Nazi confiscation is well-founded," and cautions that categories may shift as new information comes to light.

"The collection taken by the Allies comprised 117 paintings, 19 drawings and 72 decorative objects—far fewer than the 1,280 artworks recently seized in Munich, which begs the question of where, when and how Hildebrand acquired—or hid—all the additional works."

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13 NARA, "Records, Holocaust Era Assets, Ardelia Hall Administrative Records, Restitution Research Records, Interrogations: Statements of Art Dealers, Hildebrand Gurlitt," p.91. http://www.fold3.com/image/270046019

14 In 1981 Blumstein's family received a 25,000 Mark payment from the government in settlement for the artworks—including the Chagall—the Nazis took. See H-W. Saure and Ralf Gawel, "Bild lost das Rätsel des gestohlenen Chagalls," *Bild*, Dec. 11, 2013. Although Blumstein's children are aware of the Munich find, we do not know whether they have made or will make a formal claim.

CORNELIUS' COLLECTION

For the purpose of discussion, we will divide the known Munich art trove into 3 sections:

- Works that appear to have been legitimately acquired by Hildebrand Gurlitt and passed down to Cornelius.
- Degenerate works confiscated by the Nazis from German museums/ public collections, which Hildebrand was allowed to purchase. And other degenerate/modern works that did not come from German museums, but rather via friendships with the artists, eg. Beckmann; direct purchases—legitimate or otherwise—from collectors or dealers; art trades, where the prior owner may have acquired the work through looting.
- Looted or possibly looted works to which Gurlitt had access based primarily on his position as art dealer for the government.

Within these somewhat arbitrary categories there are considerable overlaps. Liebermann's *Two Riders on the Beach,* for example, which now appears to have been a looted work (but was returned to Hildebrand by the Allies after the war), also falls into the category of degenerate art, since Liebermann was Jewish. Similarly, Chagall's *Allegorical Scene* was declared degenerate, but it, too, as already mentioned, may be the subject of an ownership claim.

Provenance research in general is painstaking; but the provenance for the Gurlitt hoard may be particularly difficult to ascertain, and will keep the newly formed task-force busy. Some of the works—for example Chagall's *Allegorical Scene* and Otto Dix's *Dompteuse* of 1922 **(FIG. 8)**—do not factor into catalogues raisonnés of the artists, which were compiled in the post-war period.

Many of the Munich works are on paper, with prints and lithographs comprising a large segment of the cache. Researchers will have to plow through numerous documents to make sure that the work, or number in an edition, is correctly identified. Neither the Victoria and Albert list of degenerate artworks, nor the collection lists made by the Allies is very detailed. In their written documentation, the U.S. military organized objects according to the shelves on which they had been placed when confiscated. Generally, only an inventory number, the artist's name and the subject identifies an object, with no mention of the title, date, support, or presence or absence of a signature. The Picasso *Woman with Two Noses,* for example, was originally identified as "German 20th c. Woman's Head." In later documentation someone scribbled "Picasso" next to the entry. Karl Ballmer's letter describes it as a "gouache" and provides dimensions (45 x 30 cm), which may be of some help, but from the title provided and without an image, IFAR has not been able even to identify the work. The Wiesbaden list of Gurlitt's collection contains at least three works by George Michel that are simply titled *Landscape* with no other identifying markers, making authoritative cross referencing very difficult.

FIGURE 8. OTTO DIX. *Dompteuse,* 1922. Watercolor and pencil on paper. 58.6 x 42.8cm (23 x 17 in.).

"Regulations limit the posting of a work to the Lost Art site unless the prosecutor's office believes 'that the suspicion of Nazi confiscation is well-founded' ..."

WORKS THAT HILDEBRAND INDISPUTABLY OWNED

The SPO has only posted those Gurlitt works it believes may have a problematic provenance, and even that list is incomplete. Thus, we cannot say what works comprise the 310 that the SPO currently believes are "legitimately owned," but it would naturally include those works indisputably acquired by Hildebrand prior to 1933 or after 1945, or those created by his relatives, notably his grandfather Louis Gurlitt (1812-1879), a landscape painter. Of the works the Allies sequestered and returned to Hildebrand, approximately 17 were by Louis Gurlitt. The Allies also handed back several "decorative" and non-Western art objects, such as African and Oceanic masks, clay figures from Peru and Meissen plates. While we do not know whether these objects are included in the SPO's list of indisputably owned works, given their anonymous authorships, ethnographic nature, and minimal descriptive information, it would be difficult for a claimant to identify them or challenge their ownership.

DEGENERATE ART

Under the Law of the Confiscation of Products of Degenerate Art, enacted rather belatedly in May 1938, more than 20,000 degenerate artworks were confiscated by the Nazis from German public collections and museums during the 1937-1938 campaign against degenerate art (Aktion entartete Kunst).[15] The confiscated works were stored in two places: approximately 780 paintings and 3,500 of the best works on paper were placed in the Schloss Niederschoenhausen, a Baroque palace in Berlin; the rest were kept in two storerooms in the Kopenicker Strasse.[16] As noted, the V&A in London currently holds a hard copy inventory list of these confiscated works.

In 1938, Joseph Goebbels set up the Kommission zur Verwertung der Produkte entartete Kunst (commission for the disposal of products of degenerate art) and authorized Hildebrand Gurlitt and three other prominent art dealers: Karl Buchholz, Ferdinand Möller, and Bernhard Böhme to sell the works to raise money for the Nazi military machine or trade them for desired works by Old Masters. In 1939, 125 degenerate works confiscated from the museums were put on sale by the government in the now infamous Galerie Fischer auction in Lucerne. Works from that sale have entered major collections in the U.S., including MoMA in New York and the Fogg at Harvard. The campaign against degenerate art ended with the dramatic burning of more than 4,000 works in a Berlin courtyard, so it is with some justification that those people who acquired and hid the banned art could say that they helped "save" it, and at some personal risk to themselves. This, in fact, is what Cornelius Gurlitt said in defense of his father when his Munich trove became public.

> "More than 20,000 degenerate artworks were confiscated by the Nazis from German public collections and museums during the 1937-1938 campaign . . ."

It is clear that Hildebrand Gurlitt acquired several works that were confiscated from German museums during the Nazi purge of degenerate art, although it is difficult to say yet which ones. The SPO has not posted those works on the Lost Art site, as under the German law of 1938, the museum confiscations were legal.

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15 For the number of confiscations, see the database of the Forschungsstelle Entartete Kunst and also the discussion by Olaf Peters in *Degenerate Art: The Attack on Modern Art in Nazi Germany, 1937.* Exhib. Catal., Neue Galerie (New York: Prestel, 2014), p. 119.

16 Stephanie Barron, *Degenerate Art: The Fate of the Avant-Garde in Nazi Germany* (New York: Harry Abrams Inc., 1991), p.124. The notorious exhibition of degenerate art, which opened in Munich in July 1937 and traveled in limited form to other cities, preceded the wholesale confiscations.

A few works in the Munich trove that fall under this heading, however, are known, including Franz Marc's watercolor, *Horses in a Landscape* of 1911 **(FIG. 9)**, confiscated from the Moritzburg Museum in Halle, Germany. A cross reference with the V&A list shows that Gurlitt purchased the painting for 500 Swiss francs.[17] Similarly, Ernst Ludwig Kirchner's *Melancholy Girl,* a print found in the Munich apartment, was purged and acquired from the Kunsthalle in Mannheim.

FIGURE 9. FRANZ MARC. ***Horses in a Landscape.*** **1911. Watercolor on paper. 12.1x19.6 cm (4.7 x 7.7 in.)**

But it is not always easy to cross reference the Munich art trove with the V&A list. For example, the Otto Dix *Dompteuse* that surfaced in Munich is a watercolor. The V&A list of degenerate works confirms that Hildebrand purchased Dix's *Dompteuse* from the Konigsberg Städtische Kunstsammlung for 0.5 Swiss francs, but that work was a print. This suggests that Hildebrand, at least at one point, had both a print and a watercolor of the work, but it is not yet clear to us how he acquired the latter.

The Munich trove contains many other degenerate works that did not come from German museums. Works such as Otto Griebel's *Woman Veiled* of 1926 **(FIG. 10)**, and the undated *Child at a Table,* both watercolors, would have been declared degenerate, but IFAR cross-referenced them with the V&A list to no avail, which suggests that Gurlitt may have owned them prior to the war, or purchased them from private collectors. The Wiesbaden Collecting Point misidentified *Woman Veiled* as "Lady with a Veil" by "Otto Grissel," but the Wiesbaden identifying number 1917/7 matches that on the back of the painting. The description on the verso has a reference to "Dr. Glaser 1917/17," indicating that this work may have been in the collection of Dr. Fritz Glaser, a Jewish lawyer from Dresden who was a vibrant supporter of avant-garde art in the 1920s. Glaser hid his own degenerate art collection from the authorities and narrowly escaped deportation to the Theresienstadt concentration camp in early 1945.[18] It is possible that both of these watercolors by Griebel originally belonged to Glaser, although whether he sold them or what his ties were to Hildebrand Gurlitt, if any, remain a mystery for now. While Hildebrand and his wife Helene, claimed that all of his business records were destroyed in the Dresden firebombing of 1945, it is rumored that some files remained in Cornelius Gurlitt's apartment, but, if so, this information has not been released.[19] It is curious, however, that while all of Hildebrand's papers were supposedly destroyed in the Dresden bombings, somehow, the artworks survived.

FIGURE 10. OTTO GRIEBEL. ***Woman Veiled,*** **1926. Watercolor on paper. 41.9 x 34.3 cm (16 ½ x 13 ⅕ in.).**

Some other degenerate works were acquired by Hildebrand directly from the artists.

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17 See, *Entartete Kunst.* Digital reproduction of a typescript inventory prepared by the Reichsministerium für Volksaufklärung und Propaganda ca. 1941/42. Volume II: Gottingen to Zwickau, p. 25. http://www.vam.ac.uk/__data/assets/pdf_file/0020/240167/Entartete_Kunst_Vol.2.pdf.

18 See, Catherine Hickley, "Nazi Trove Reveals Dresden Holocaust Survivor's Lost Art," *Bloomberg News,* Nov. 12, 2013.

19 Thomas Schmidt, "Bildersturm und Bilderflut: Im Fall Gurlitt kündigt sich ein Justizskandal an." in *Die Zeit* No. 09/2014, Zeit Online 20 February, 2014. www.zeit.de/2014/09/gurlitt-justizskandal.

Although it is not known whether they remained in his collection or factor among the Munich hoard, it is known that Hildebrand traveled to Amsterdam in 1943 to visit Max Beckmann and purchased four works from the artist, whose art was banned in Germany at the time.[20] Gurlitt had championed Beckmann as early as 1936 and gave him his first major exhibition after the war, in Frankfurt in 1947.

POTENTIALLY LOOTED ART

The SPO has designated 590 of the Munich works as questionable in terms of provenance *and* potentially looted. Only 458 of these have been posted. Perhaps the most prominent, however, and almost surely the most valuable, is an Henri Matisse oil painting of c.1920 (1924?) **(FIG. 11)**. Called *Seated Woman/ Woman Sitting in an Armchair* by the SPO, but alternately and more frequently referred to as *Woman with a Fan* or *Woman with a Headscarf,* the painting belonged to the French Jewish art dealer, Paul Rosenberg, who exclusively represented Matisse at the time of World War II.

Unlike many other paintings that have surfaced in Munich, the trail for the Matisse is reasonably well documented. It was one of 162 Rosenberg works seized by the Einsatzstab Reichsleiter Rosenberg taskforce (ERR) from its hiding place in a bank vault in Libourne (Bordeaux), France in September 1941, then sent to the Jeu de Paume storeroom in Paris, and was soon traded for a School of Fontainebleau painting to the dealer Gustav Rochlitz.[21] It is not exactly clear how it got to Hildebrand Gurlitt by 1944. After the war, Paul Rosenberg actively searched for his stolen artworks, including the Matisse in question, regaining many but not all of them. His family has continued the search. But the November 2013 *Focus* magazine article and subsequent government press conference was the first they learned the whereabouts of this Matisse, their attorney Christopher Marinello told IFAR. They filed an immediate claim.

Although the Matisse entered Hildebrand's collection in 1944, it was not one of the 117 paintings seized from him by the Allies in 1945 and returned in 1950. Why? Where was the painting at that time? As already noted, the works seized and returned by the Allies make up only a small percentage (about 15%) of the Munich hoard, but as

FIGURE 11. HENRI MATISSE. ***Seated Woman,* 1921. Oil on canvas. 56 x 46 cm. Left, shown in a pre-war black and white photograph. Right, as posted in a poor color reproduction watermarked by the Bavarian State Prosecutors Office (SPO).**

20 See, Julia Voss, *Frankfurter Allgemeine,* November 11, 2013, who cites NARA records for discovering that Gurlitt visited Beckmann on October 19 and 20, 1943 (and perhaps subsequently) and purchased 4 works *(Woman with a White Jacket, French Bar, A Fish,* and a *Southern Landscape).* Beckmann had left Berlin at the time of the Entartete Kunst exhibition, which included 22 of his paintings and graphics.

21 See, Nancy H. Yeide, *Beyond the Dreams of Avarice: The Hermann Goering Collection* (Dallas: Laurel Publishing, 2009), p. 462, D67; NARA ERR records (inventory number 353); and Hector Feliciano, *The Lost Museum* (New York: Basic Books, 1997), p.118; illustrated on p.A7 as "whereabouts unknown."

the Matisse shows, at least some of the works acquired before the war's end—including works with tainted provenance—escaped Allied investigators.

"Unlike many other paintings that have surfaced in Munich, the trail for the Matisse is reasonably well documented."

Several other contested works that were seized and returned have already been mentioned here, including Liebermann's *Two Riders on the Beach,* which has spurred a lawsuit in the U.S. by the heirs of David Friedmann. Friedmann, a Jewish landowner and sugar refiner from Breslau (now Wroclaw), purchased it in 1905 and exhibited it in 1917 and 1927. It was also illustrated in 1917 in an article in the German periodical *Deutsche Kunst und Dekoration.* The provenance for this painting has been published in the catalogue raisonné of Liebermann's work.[22] Despite its well-documented paper trail to Friedmann, however, the work was returned to Hildebrand by the Allies in 1950, Hildebrand evidently convincing investigators that the work was legitimately his. He apparently felt comfortable enough about his ownership that he lent the painting in 1954—two years before he died in a car crash—to exhibitions at the Landesgalerie Hannover, the Kunstverein Düsseldorf and the Kunstverein in Hamburg. No claim was made on it at the time.

But the lawsuit paints a less innocent picture about Gurlitt's acquisition of the work. It references a letter dated December 5, 1939 with a subject heading, "Seizure of Jewish Collections." Written by a Dr. Westram, a senior government official in the Reichsministry for Economics, to the Nazi Minister of Economics in Berlin, the letter has a section on the "estimated value of artworks owned by Friedmann, a Jew." It says: "The painting by Liebermann (Riders on the Beach) would fetch at least 10-15,000 Reichsmarks abroad." Westram added that Friedmann had been forbidden to sell his works without authorization.[23] Friedmann's collection was subsequently seized. In 1942, Cornelius Hofstede, the director of a museum in Breslau, wrote to Hildebrand in Dresden offering him the *Two Riders* along with another Liebermann painting *(Basket Weavers).* Hofstede signed the letter "Heil Hitler." Gurlitt evidently made the purchase. Whether he knew precisely how or whether the works had been acquired from Friedmann isn't clear, but it is difficult to believe that he didn't realize they had been looted.

FIGURE 12. CARL SPITZWEG. ***The Piano Recital,* 1840. Pen and ink on paper. 16.4 x 13 cm (6 ½ x 5 in.).**

Another work returned to Gurlitt by the Allies has not yet spurred a claim, but may. Carl Spitzweg's *The Piano Recital,* a small drawing of c.1840 **(FIG. 12),** originally belonged to the Leipzig music publisher, Henri Hinrichsen. Gurlitt purchased it directly from Hinrichsen in July 1940 for 300 Reichsmark. But Hinrichsen, a Jew, fled Germany with his wife that same year. She perished in Brussels in 1940 and he was later killed in Auschwitz. This suggests that the work was sold to Gurlitt under duress. Heirs of the Hinrichsen family who now live in London are said to be considering a restitution claim.[24]

22 Matthias Eberle and Walter Feilchenfeldt, *Max Liebermann 1847-1935: Werkverzeichnis der Gemälde und Ölstudien.* (Munich: Hirmer Verlag, 1995).

23 The letter, which surfaced in the Polish National Archive in Wroclaw, is cited in the Toren lawsuit and also mentioned in an article in the German magazine, *Der Spiegel:* http://www.spiegel.de/international/germany/0,1518,932899,00.html

24 http://www.zeit.de/kultur/kunst/2013-11/gurlitt-hinrichsen-erbe-kunstfund

WHAT LIES AHEAD?

We have tried to give some sense of the complexity of the provenance research involved in examining the Munich trove and determining the legitimacy of Cornelius Gurlitt's possession of the works. The international task force, as noted, clearly has its job cut out for it. Perhaps it will also be able to explain how Hildebrand and Cornelius managed to hide so many works from the rest of the world not only in recent years, but at the time of the Allied investigations.

It remains to be seen what will happen regarding the ownership claims in Germany and now in the U.S. While Cornelius Gurlitt continues to insist that he legally owns the entire Munich trove, he appears to have softened his initial stance that he would not even entertain restitution claims. He has hired attorneys—civil and criminal—and has set up a website to provide information, address media inquiries, and "encourage" claimants to come forward. Although he, and his lawyers, have said that he is absolutely under no legal obligation to do so, he is now amenable to private discussions about individual ownership claims from heirs of persecuted Jews and "where morally compelling grounds exist"—but only *after* his collection that was seized, he believes illegally, by the SPO is returned to him. His attorneys assert that no more than about 3% of the 1,280 confiscated artworks are subject to such claims.

Gurlitt has already reached a private agreement regarding at least one of the artworks, Beckmann's *Lion Tamer,* which Hildebrand purchased in 1931 from Alfred Flechtheim, a prominent Jewish art dealer. Flechtheim's heirs approached Cornelius when they learned that he was planning to auction the painting in Cologne in 2011, and asserted that the work had been sold by Flechtheim under duress. They came to an agreement, Flechtheim's heirs reportedly getting 45% of the profits of the sale. The work, estimated to sell for 300,000 euros, sold for 864,000 euros (with premium), and indeed, the catalogue entry for the Lempertz sale of December 2, 2011, lot #230, notes that the work was "sold after amicable settlement with the estate of Alfred Flechtheim."

Will the legal advantage remain on Gurlitt's side? While this article is not focused on legal issues, it is clear that Germany's 30-year statute of limitations for claims under its Civil Code works in Gurlitt's favor. He could choose to waive the limitations defense, but he has given no indication that he would do so. His attorneys insist that he legally owns the collection by acquisitive prescription. Similarly, Germany's Forfeiture Act of 1938 allowing the confiscations of works of degenerate art—a law that has never been nullified—works in his favor regarding the degenerate works confiscated from German museums, which, Cornelius' lawyers insist, Hildebrand "legally acquired by purchase or trade." Cornelius has said that he will "gladly review appropriate repurchase offers made by German museums."

Whether the government's investigation into tax evasion and possible other criminal offenses by Cornelius will give it leverage to force settlements with Holocaust heirs—or the museums—is an open question. The government has been under pressure for mishandling the case and will likely be looking for an equitable solution. Will others follow the lead of the Friedmann heirs and try to sue in the United States? Will that suit even be allowed to go forward? There is much more to be said on this complicated case, which no doubt will be in the news for a long time. We will return with more.

—SHARON FLESCHER and
MICHELE WIJEGOONARATNA,
IFAR Research Associate

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ANCIENT GOLD TABLET RETURNED TO GERMAN MUSEUM

In what might be described as a "man bites dog" restitution saga, which pitted a German museum against a Holocaust survivor's heirs, the court finally ruled—unequivocally—in favor of the museum. In November (2013), the New York State Court of Appeals ordered the Estate of Riven Flamenbaum to return a 3,200-year-old Assyrian tablet to the Vorderasiatisches (Near East) Museum in Berlin.[1]

The tiny inscribed gold tablet **(FIG. 1)** dates from the 13th century BC and originated as a record of the construction of the Ishtar Temple in what is now northern Iraq. In 1913, a German archaeological expedition to what was then the Ottoman Empire shipped the tablet to Germany, but its arrival was delayed for years due to the outbreak of World War I. The Vorderasiatisches Museum displayed the precious artifact from 1934-39, but then moved it into storage for safekeeping during World War II.

"A 'man bites dog' story pitted a German museum against a Holocaust survivor's heirs ..."

The tablet's exact wartime fate remains a mystery. Soviet troops took stored objects from the museum in 1945 after the collapse of the Third Reich, but there is no inventory indicating what was taken and the museum did not discover the loss of the tablet until sometime after the war. The museum never reported the loss to local authorities, pursued the tablet's recovery, or listed it on any stolen art registries.

Decades later, in 2003, the tablet emerged among the possessions of the then-recently deceased Riven Flamenbaum of Great Neck, New York. An Auschwitz survivor, Flamenbaum emigrated to the U.S. in 1949. He brought the tablet with him into the U.S. According to his family, he originally acquired it from Russian soldiers after the war in exchange for cigarettes. When one of Flamenbaum's daughters settled his estate, she listed a "coin collection" among its contents. Her brother, however, objected that she had undervalued the collection, which included a "gold wafer" that was "believed to be an ancient Assyrian amulet and the property of a museum in Germany."[2] After the brother contacted the museum, it joined the probate proceedings in an attempt to recover the ancient artifact and a lengthy legal battle ensued.

FIGURE 1. ***Ishtar Temple Tablet,*** **c.1207 B.C. Gold. Approx. 1 ½" x ⅜". Returned to a museum in Germany from the family of a Holocaust survivor.**

In 2010, the probate court—the Surrogate's Court of Nassau County—ruled in favor of the Estate[3] on the grounds of laches, an affirmative defense that bars a claimant (here, the museum) from recovering property when

1 See *In the Matter of Riven Flamenbaum, Deceased,* 2013 NY Slip Op. 07510 (N.Y. Court of Appeals, Nov. 14, 2013).

2 See *In the Matter of the Accounting of Hannah K Flamenbaum, as Executor of Rivin Flamenbaum, Deceased,* 27 Misc. 3d 1090 (N.Y. Sur. Ct. 2010).

3 *Ibid.*

it has unreasonably delayed its search for it, thereby prejudicing the current possessor. According to the probate court, laches applied because the museum neither reported the loss nor attempted to recover the tablet.

On appeal, the New York Appellate Division, Second Department, reversed,[4] holding principally that the Estate had *not* been prejudiced, because a thief—including a government (here, the Soviet Union) seizing cultural property during wartime—cannot pass legal title to stolen work. Consequently, the Russian soldiers could not have obtained or passed legal title to the tablet when they traded it to Flamenbaum.

On November 14, the New York Court of Appeals unanimously affirmed that ruling, noting that while the museum *could* have taken steps to locate the tablet, such as reporting the loss to authorities or stolen art registries, the museum's explanation that "it would have been difficult to report each individual object that was missing after the war" was reasonable. Moreover, even if the museum had taken such steps, the court said, the Estate provided no proof to support its claim that the museum would have discovered, prior to his death, that Flamenbaum was in possession of the tablet. In addition, the Estate failed to demonstrate that it had been prejudiced by the museum's inaction, as the court could "perceive of no scenario whereby the decedent could have shown that he held title to this antiquity." Therefore, laches did not bar the museum's claim.

As to a spoils of war theory that the Estate also raised, it, the Court of Appeals said, rested entirely on conjecture, the court flatly rejecting the argument that the Russian government gained (and later passed) title to the tablet as a spoil of war when it invaded Germany. The court seized the opportunity to "decline to adopt any doctrine that would establish good title based upon the looting and removal of cultural objects during wartime by a conquering military force." Any other decision, the court said, would be "fundamentally unjust."

The Flamenbaum heirs surrendered the tablet on the fourth of December during a ceremony at the Nassau County Surrogate's Court. It is not certain when it will be on view, but, according to the museum's attorney, Raymond Dowd, the tablet will be featured in a Near East Asian exhibit at the museum planned for 2018.

—ANN-MARGRET GIDLEY
IFAR Legal Associate
and **S. F.**

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4 *In the Matter of Riven Flamenbaum Deceased*, 95 A.D. 3d 1318 (N.Y. App. Div. 2dDep't May 30, 2012).

CONSIGNOR CONFIDENTIALITY IS HERE TO STAY

The auction world must be breathing a big sigh of relief: a New York State court, overturning a lower court, has ruled that consignors can keep their anonymity while still having legal recourse against reneging bidders. In 2012, a lower court had ruled that a consignor's name must be included in a sales contract to comply with the state's Statute of Frauds—a law that requires certain contracts to be in writing.[1] Had that ruling been upheld, auction houses would have been forced to choose between protecting consignor privacy or taking legal recourse against a defaulting bidder. The New York Court of Appeals' December 2013 ruling frees auction houses from having to make that difficult choice.

The case arose when the William J. Jenack Estate Appraisers and Auctioneers in Chester, New York auctioned off a nineteenth century "Fine Russian Silver/Enamel Covered Box" in its September 21, 2008 sale **(FIG. 1)**. Like most auction houses, Jenack permits online and telephone bidding, with the terms of sale described on its website. Albert Rabizadeh registered online and subsequently submitted the winning bid of $400,000 for the silver/enamel covered box. Jenack recorded Rabizadeh's bidder number on a "clerking sheet," which described each item in detail and included numbers corresponding to each item's consignor.

But there was a hitch: Rabizadeh reneged on the bid. When it became clear that he was never going to pay, Jenack took him to New York State court to enforce the sales contract. Rabizadeh had a novel response: he argued that he was not obligated to pay because there was no writing memorializing a contract as required by New York General Obligations Law § 5- 701(a)(6) —the New York "Statute of Frauds." The Statute of Frauds is designed to prevent a party from being held responsible, by oral, and perhaps false, testimony, for a contract that the party claims never to have made. New York's Statute of Frauds requires that a contract for the sale of goods of $500 or more at public auction must contain, among other things, the name of the purchaser and the "name of the person on whose account the sale was made." Jenack maintained that the clerking sheet and related bidding documents satisfied the Statute of Frauds. New York's Supreme Court agreed with Jenack and ordered Rabizadeh to pay up.

> "Had that ruling been upheld, auction houses would have been forced to choose between protecting consignor privacy or taking legal recourse against a defaulting bidder."

Before opening his wallet, Rabizadeh asked the Appellate Division, Second Department, to weigh in. In a much-anticipated decision, it reversed the trial court and ruled that a consignor's name must be divulged to a winning bidder to satisfy the clear wording of the Statute of Frauds. In reaching that decision, the Appellate Division acknowledged that consignor confidentiality was the customary practice in the auction world but noted that it was constrained to apply the law as written, suggesting

1 *William J. Jenack Estate Appraisers and Auctioneers, Inc. v. Albert Rabizadeh,* 99 A.D.3d 270 (N.Y. App. Div. 2d Dep't 2012); – NY3d –, 2013 NY Slip. Op. 08373 (Dec. 17, 2013).

FIGURE 1. ***Fine Russian Silver/Enamel Covered Box,*** **signed I.P. Khlebnikov. Approx. 1 ½ x ½ x 3 ⅝ inches. At the heart of a lawsuit that had the potential to upend the New York auction world.**

that the state legislature amend the statute if the result was unintended. Interestingly, the Appellate Division also included a footnote stating that it had not considered whether the name of the auction house on the clerking sheet might suffice as the "name of the person on whose account the sale was made."

Since consignor confidentiality is practically sacrosanct in the art world, the Appellate Division's decision caught many people, and no doubt Jenack, by surprise. Jenack asked the New York Court of Appeals to review the decision. Together with Sotheby's, which joined the appeal, Jenack argued that the auction business is important to New York State and that it is a time honored and necessary custom and practice of auction houses to maintain the confidentiality of consignors. A requirement to identify the consignor, they contended, would undermine the industry.

The Court of Appeals reversed the Appellate Division, but for a different reason. It concluded that the Statute of Frauds does not reference the "seller," thus making it clear that the seller's name need not be provided in order to satisfy the requirement of "the name of the person on whose account the sale was made." Instead, the court said, the name of an auction house, acting as an agent for a consignor, satisfies the Statute's requirement. Thus, the clerking sheet and related documents, which included Jenack's name, sufficed to comply with the Statute of Frauds. The court also chastised Rabizadeh for seeking "to avoid the consequences of his actions by ignoring the existence of a documentary trail leading to him."

Rabizadeh, it seems, will have to open up his wallet and pay for that pretty little box he won back in 2008.

—A.M.G. and **S.F.**

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BETTER LATE THAN NEVER: STOLEN RENOIR RETURNS TO BALTIMORE MUSEUM AFTER 60 YEARS

A tiny Renoir landscape has made its way back to the Baltimore Museum of Art (BMA) more than six decades after it was stolen, proving that there is still hope for the Gardner Museum to recover its stolen items.

FIGURE 1. PIERRE-AUGUSTE RENOIR. ***Paysage bords de Seine,*** **1879. Oil on linen, 5 ½ x 9 inches (14 x 23 cm). Returned to the Baltimore Museum of Art by court order.**

On January 14, 2014, a federal court in Virginia ordered the return to the BMA of *Paysage bords de Seine* **(FIG. 1),** an 1879 oil on linen that the museum had reported stolen in 1951.[1] The woman who consigned it to the auction where it was "rediscovered" claims that she purchased it at a flea market in 2009—although many, including her brother, question her story. Regardless, said the court, a thief cannot pass title to a stolen item; therefore, she never obtained title and the painting still belongs to the BMA. The decision ended a legal kerfuffle that involved the museum, the consignor, the auction house, the FBI, the heirs of a BMA donor, and an insurance company.

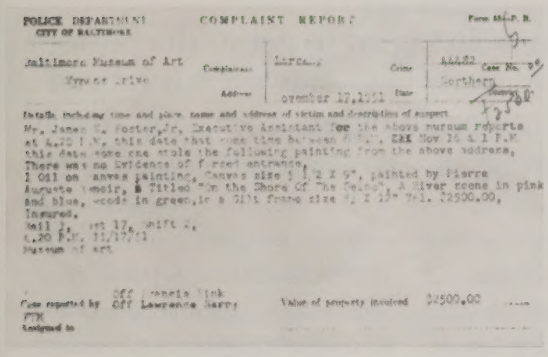
The whereabouts of the napkin-sized (5 ½ x 9 inches) painting over the last 60 years remain largely a mystery, but it resurfaced in 2012 when Martha Fuqua consigned it for auction at the Potomack Company, an antiques and fine arts auction gallery in Alexandria, Virginia. She claimed that she had purchased the framed painting for $7 (along with a plastic cow and a Paul Bunyan doll!) at the Harpers Ferry Flea Market in West Virginia in 2009. Since neither the Art Loss Register nor the FBI art theft database flagged the painting when the Potomack Company undertook its due diligence search, the auction house accepted the consignment and issued a press release touting the "flea-market Renoir."

When the BMA learned of the upcoming auction and that a recent catalogue raisonné on Renoir by Bernheim-Jeune listed Herbert May, the husband of a major benefactor of the BMA, in the painting's early provenance, it checked its permanent collection records to see if the work had ever been in its collection; it came up with nothing.

Ian Shapira, a reporter with the *Washington Post,* also started to dig around and had more success. He discovered in the BMA's *loan* records that the painting had been loaned to the museum in 1937 by Saidie May, Herbert May's wife. Herbert May had purchased the painting from the Bernheim-Jeune gallery in Paris in 1926 and, presumably, gave it to Saidie May as a gift before their divorce. What is more, Shapira's research revealed that the painting remained at the museum until it was *stolen* while on exhibit in 1951—shortly after Saidie May's death.

Armed with the loan number thanks to Shapira, the BMA dug deeper into its internal files and

[1] In re: "*Paysage bords de Seine," 1879 unsigned oil painting on linen by Pierre-Auguste Renoir,* Slip op., No. 13cv347 (LMB / TRJ) (Jan. 14, 2014 E.D. Va.).



POLICE DEPARTMENT
CITY OF BALTIMORE

COMPLAINT REPORT

Form 86-P. D.

Baltimore Museum of Art

Complainant

Larceny

Crime

Case No. 9

Address

Date

Details, including time and place, name and address of victim and description of suspect

Mr. James H. Foster, Jr., Executive Assistant for the above museum reports at 4:30 P.M. this date that some time between [illegible] EST Nov 26 & 1 P.M. this date some one stole the following painting from the above address. There was no evidence of forced entrance.

1 Oil on canvas painting, Canvas size [illegible] painted by Pierre Auguste Renoir, & Titled "On the Shore Of The Seine", A River scene in pink and blue, woods in green, in a Gilt frame size [illegible] Val. $2500.00, Insured.

Nail 1, set 12, shift 2.
4:30 P.M. 11/27/51
Museum of Art

Case reported by Off Lawrence Harry

Value of property involved $2500.00

FIX

Assigned to

FIGURE 2. The police report filed by the BMA in 1951. Photo: Baltimore Police Department.

discovered that it had filed a police report at the time **(FIG. 2)** and received an insurance payout of $2,500 for the theft. The police report noted that there was no evidence of a forced entry at the BMA and that no other items were stolen.

THE LEGAL BATTLE

When notified of the police report, the FBI seized the painting from the auction house, which had already pulled it from sale just days before the scheduled auction. The U.S. government then filed an interpleader action, an equitable proceeding that allows a court to determine the ownership rights of rival claimants to, in this case, property held by a third party that does not have a claim to it. The government identified several potential claimants, including the BMA, Martha Fuqua, the Fireman Fund's Insurance Company (which had paid the claim when it was stolen), and the respective heirs of Saidie and Herbert May. The heirs were dismissed from the suit, some by request and others by default, and the Fireman's Fund assigned its rights to the BMA. The only remaining claimants, Fuqua and the BMA, each filed a claim.

Here is where the story gets really interesting: Martha's brother, Matt Fuqua, called his sister's flea market story a tall tale. In a deposition he said, "My mother told Martha to 'return the painting to its rightful owner—the museum—so all of this goes away'." But what did their mother mean? Their mother was a fine arts student who owned and operated an art school for decades. According to the *Washington Post,* which continued to follow the story, she also had artistic links to Baltimore when the painting was stolen. Matt Fuqua believes the painting was given to his mother as a gift years ago, but she never confirmed his suspicion. At any rate, various family acquaintances have said that they saw the painting in the mother's home as early as the 1980's. Matt Fuqua and his girlfriend say the Renoir was in the mother's home as recently as 2011, two years after Martha Fuqua's alleged flea market discovery. Her mother's part in this will remain a mystery; she died in September 2013 while the legal battle for title to the painting was unfolding.

The museum didn't need to get to the bottom of the Fuqua family feud, however. It moved for partial summary judgment, arguing that it held superior title to the painting irrespective of the painting's recent history because it had been stolen from the BMA in 1951. Martha Fuqua opposed the motion, countering that the BMA's evidence of theft was inadmissible as improperly authenticated hearsay.

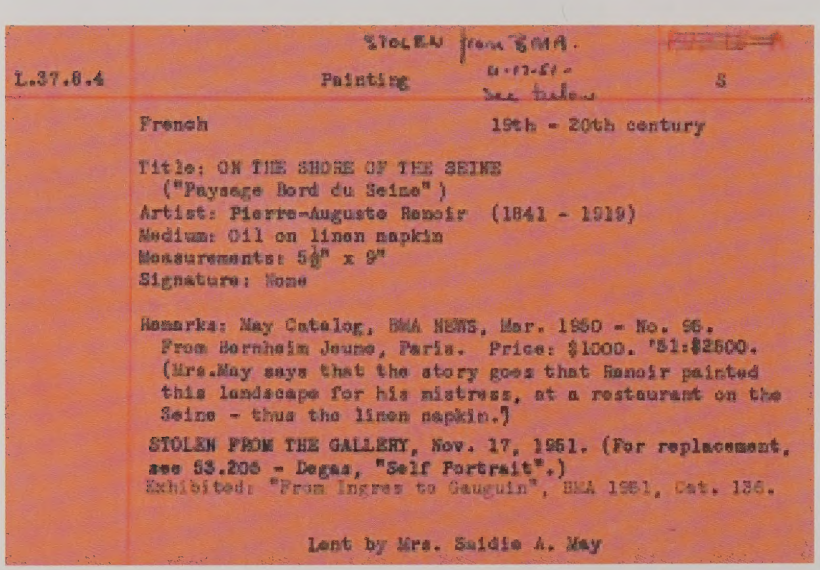
On January 14, 2014, the District Court declared the BMA the rightful owner. It noted that even though "possession is nine-tenths of the law," the BMA had presented enough evidence to rebut the presumption that Fuqua held clean title to the painting. The court cited the BMA's internal records (including the loan records, Minutes from a board meeting discussing the theft, and records of the insurance payout) and the police report as "overwhelming" proof of theft. Fuqua, said the court, failed to offer even "a scintilla of evidence that the painting was not stolen from the BMA." The

court dismissed her attack on the BMA's evidence as "ridiculous." Accordingly, "because even a good-faith purchaser for value cannot acquire title to stolen goods," it ordered that the painting be returned to the BMA.

> "The museum didn't need to get to the bottom of the Fuqua family feud, however. It moved for partial summary judgment, arguing that it held superior title to the painting, …"

THE PAINTING

As to the painting itself, it is a delicate unsigned landscape from Renoir's high Impressionist period. A note in the museum's loan records (FIG. 3) indicates that Saidie May told the museum that Renoir supposedly painted the landscape "for his mistress at a restaurant on the Seine—thus the linen napkin." While the story cannot be fully verified, it is probable. The restaurant is likely *La Maison Fournaise,* in Chatou, a village just outside Paris along the banks of the Seine, which was a popular Impressionist watering hole in the 1870's and 80's. The Renoir catalogue raisonné indicates that Bernheim-Jeune, which sold the work to Herbert May in 1926, acquired the painting in 1925 from a "Mme. Papillon." Interestingly, Louise Alphonsine Fournaise, daughter of the restaurant owner and one of the figures portrayed in Renoir's popular *Luncheon of the Boating Party* of 1881, now in the Phillips Collection in Washington, married a man named Joseph Papillon. Thus, it is likely that she is the Mme. Papillon from whom Bernheim-Jeune acquired the work almost 40 years later and to whom Renoir gave it at the time it was painted. Whether Louise, who was already married, was then Renoir's mistress is another story.


STOLEN from BMA.

L.37.8.4 Painting S

French 19th - 20th century

Title: ON THE SHORE OF THE SEINE
("Paysage Bord du Seine")
Artist: Pierre-Auguste Renoir (1841 - 1919)
Medium: Oil on linen napkin
Measurements: 5⅜" x 9"
Signature: None

Remarks: May Catalog, BMA NEWS, Mar. 1950 - No. 96.
From Bernheim Jeune, Paris. Price: $1000. '51:$2500.
(Mrs.May says that the story goes that Renoir painted this landscape for his mistress, at a restaurant on the Seine - thus the linen napkin.)
STOLEN FROM THE GALLERY, Nov. 17, 1951. (For replacement, see 53.206 - Degas, "Self Portrait".)
Exhibited: "From Ingres to Gauguin", BMA 1951, Cat. 136.

Lent by Mrs. Saidie A. May

FIGURE 3. The BMA's loan record. Photo: The Baltimore Museum of Art.

Now that the work is back at the museum, the BMA's director, Doreen Bolger, told the *Washington Post* that she plans to "anchor" it to the wall and will exhibit it this spring in an exhibition devoted to works bequeathed to the museum by Saidie May.

—**S.F.** and **A.M.G.**

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NO PEACE FOR THE MUMMY MASK
ORAL ARGUMENT IN SLAM SUIT

FIGURE 1. *Mummy Mask of Ka-Nefer-Nefer,* Egyptian, Dynasty 19 (1307–1196 B.C.) Plaster, resin, glass, wood, gold, and pigment, 21 1/16 x 14 5/16 x 9 inches. Coll. St. Louis Art Museum.

Closure still seems far off in the U.S. government's case against the St. Louis Art Museum (SLAM) over an ancient mummy mask that the government says was stolen from Egypt. On January 13th, the Eighth Circuit Court of Appeals heard oral argument in the forfeiture action.[1] At issue: whether the lower court correctly denied the government's post-judgment request to amend its forfeiture complaint. The lower court said that the complaint fell short because it merely stated that "the Mask was found to be 'missing' from Egypt" but did not articulate the who, what, when or where of the alleged events surrounding the alleged 'stealing.'[2] If the Eighth Circuit agrees, the forfeiture action will come to an end, although it won't necessarily end the legal battle.

As IFAR previously reported,[3] SLAM purchased the 3,200 year old Mask of Ka-Nefer-Nefer **(FIG. 1)** in 1998 for $499,000 after its due diligence failed to turn up any problems. In 2006, Dr. Zahi Hawass, then Secretary General of Egypt's Supreme Council of Antiquities, demanded that SLAM return the mask to Egypt, asserting that it had been stolen approximately 15 years earlier from a museum storage area, more than 30 years after it had been documented by a noted archaeologist. SLAM refused and, after failed negotiations, filed a declaratory judgment action in 2011 to have a court declare it the legitimate owner. One month later, the U.S. government filed an *in rem* forfeiture action contending that the mask had been "stolen, smuggled, or clandestinely imported" into the United States "contrary to law." The declaratory judgment action was stayed pending a decision in the forfeiture action.

In March 2012, the District Court dismissed the forfeiture action because the government's Complaint did "not provide a factual statement of theft, smuggling, or clandestine importation," in other words, that it wasn't supported by any evidence that the mask had actually been stolen. When the government presented an amended complaint after the court had already ruled, the court said it was too late. The Eighth Circuit Court of Appeals is now reviewing that decision.

At oral argument, the government said that it was merely asking the Eighth Circuit to "let them in the gate" so they can present their arguments to the District Court. One skeptical judge, however, characterized that request as "beg[ing] for a do-over" after making procedural mistakes the first time around, to which the government countered that there is a judicial interest in adjudicating cases on the merits. The three-judge panel expressed concern as to whether it even has the power to grant the requested post-judgment relief. Throughout the hearing, the panel seemed to suggest that the government should pursue its arguments in the declaratory judgment action, but the government confessed to preferring the forfeiture action where its burden of proof is lower. For its part, SLAM's attorney characterized the government's request as seeking "an advisory opinion," which is constitutionally prohibited. Moreover, he argued, the amended complaint that the government is fighting to have the court accept *still* does not show that Egypt ever owned the mask, let alone that it was stolen.

And so, the mummy's fate remains in limbo.

—**A.M.G** and **S.F.**

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1 *United States v. Mask of Ka-Nefer-Nefer, et al.*, Civ. No. 12-2578 (8th Cir. filed July 3, 2012).

2 *United States v. Mask of Ka-Nefer-Nefer, et al., No. 11-cv-504 (HEA) (E.D. Mo. March 31, 2012).*

3 *See IFAR Journal,* Vol. 8, no. 2 (2005-06), Vol. 12, no. 4, (2011) Vol. 13, no. 4 (2013), and Vol. 14, nos. 1 & 2 (2013).

NEW LEASE ON LIFE FOR CASSIRER CLAIM

The Cassirer family in California has been trying for years to recover a late Pissarro painting **(FIG. 1),** now in the Thyssen-Bornemisza Collection in Madrid, which was owned by a relative before WWII.[1] After an initial Cassirer court victory, the case was later stymied in the California District Court, when the statute of limitations law on which it was based was ruled unconstitutional. Now, the Ninth Circuit Court of Appeals has resuscitated the claim a second time.[2]

The case, which began in 2005, was initially of legal interest because it raised a novel question: whether the pre-WWII owner's great-grandson (now deceased), an American citizen, could sue the Kingdom of Spain (which has control over the foundation that runs the museum) for the return of the painting, even though it was Nazi Germany, not Spain, that had allegedly misappropriated the work. The answer to that question was yes: the Ninth Circuit (reversing the District Court) allowed the action under the "expropriation exception" to the Foreign Sovereign Immunities Act.

When the claim against Spain (but not the museum) was dropped unexpectedly, the case became a testing ground for the constitutionality of amendments to California Civil Procedure Code §338(c), which had sought to extend California's statute of limitations for certain claims seeking the return of art stolen after 1910. In 2012, the District Court struck down the new provisions, holding that, like their predecessor (Cal. Civil Code §354.3), the amendments to §338(c) were actually intended to create a "friendly forum for litigating Holocaust restitution claims," thus infringing upon the federal government's exclusive power to conduct foreign affairs.

The Ninth Circuit's recent ruling—on December 9, 2013—again reversed the District Court, permitting the heirs' claim to proceed on its merits. In its opinion, the Ninth Circuit explains that §338(c) is not preempted by federal law (as §354.3 was) because it does not create a new remedy for wartime claims and because it applies to any "work of fine art," not just Holocaust-era artwork. Therefore, said the court, the California statute is silent on the matter of foreign affairs and does not implicate the federal government's foreign affairs power. The Ninth Circuit's ruling has been stayed while the Foundation seeks Supreme Court review.

FIGURE 1. CAMILLE PISSARRO. ***Rue Saint-Honoré. Après-midi, Effet de Pluie,* 1897. Oil on canvas, 32 by 25.5 inches (81 x 65 cm). Claimed from the Thyssen-Bornemisza Collection, Madrid.**

—**A.M.G** and **S.F.**

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1 See previous discussions about this case in *IFAR Journal,* Vol. 10, no. 2 (2008); Vol. 12, no. 4 (2011); Vol. 13, no. 3 (2012).

2 *Cassirer v. Kingdom of Spain,* 461 F. Supp. 2d 1157 (C.D. Cal. 2006); *aff'd in part and dismissed in part,* 580 F.3d 1048 (9th Cir. 2009), *aff'd in part and dismissed in part, en banc,* 616 F.3d 1019 (9th Cir. 2010); *cert. denied,* 131 S. Ct. 3057 (U.S. 2011); *on remand sub nom Cassirer v. Thyssen-Bornemisza Collection Found.,* slip op. No. 05-CV-3459-GAF (C.D. Cal. May 24, 2012); *rev'd in part, aff'd in part, and remanded by* slip op., No. 12-56159 (9th Cir. Dec. 9, 2013).

KHMER STATUE BACK TO CAMBODIA
WHAT DOES THIS MEAN FOR THE NORTON SIMON COMPANION PIECE?

A surprising end to the contentious battle over a 10th Century Khmer sandstone sculpture **(FIG. 1)** came on December 12 (2013) when Sotheby's, its consignor, and the U.S. government filed a settlement agreement allowing the epic stone warrior to return to Cambodia.[1] The statue, with an estimated value of two to three million dollars, was pulled from auction two years ago after Cambodia alleged that it had been stolen decades earlier.

FIGURE 1. ***Athlete,*** **Cambodia, Khmer, Koh Ker period, 10th century. Sandstone. Ht: 62 ⅜" (158.4 cm). Returning to Cambodia pursuant to a legal settlement. Photo: court documents.**

IFAR has closely followed this story,[2] which was shaping up to require a federal court to untangle U.S., Cambodian, and even French Colonial laws dating back to 1900 to determine whether the statue had been stolen in violation of Cambodian law and then imported into the U.S. in violation of the U.S. National Stolen Property Act (NSPA).

As is usually the case, the settlement gave each side some, but not all, that it had hoped to get in court. Neither the auction house nor the consignor, Ms. Ruspoli di Poggio Suasa, will receive compensation for the statue, to which Sotheby's and Ms. Ruspoli maintain that Ms. Ruspoli held clear legal title at all times. In turn, the U.S. government conceded that neither Sotheby's nor Ms. Ruspoli *knew* or *believed* that the statue was owned by Cambodia, as the government had alleged.

The government also retracted its accusations that Sotheby's (and Ms. Ruspoli) may have knowingly provided false or misleading provenance information. Stating that further litigation would be burdensome, the parties submitted the settlement agreement to the court "in the interests of promoting cooperation and collaboration with respect to cultural heritage." Unanswered by the settlement is the thorny question of whether French Colonial decrees from the early 20th century, long before Cambodia became an independent country, vested ownership of the statue, and by extension any other cultural property, in the modern nation of Cambodia, thereby triggering the NSPA when it was brought into the U.S. The sculpture, known as the *Duryodhana*, was scheduled to be returned to Cambodia within 90 days of the agreement, which was accepted by the court on December 13. As IFAR went to press, the work was still in New York.

> "The settlement gave each side some, but not all, that it had hoped to get in court."

Cambodia announced its plans to organize a ceremony celebrating the sculpture's homecoming. It used the opportunity to urge other collectors holding potentially looted Khmer treasures to return them as well. It no doubt was alluding to its campaign to rejoin nine figures that once inhabited the 1,000-year-old Prasat Chen temple in the ancient Khmer capital city of Koh Ker, approximately 75 miles northwest of Angkor Wat. According to archaeologists, seven temple figures stood as witnesses to the mythological Hindu duel between the warrior *Duryodhana* and his cousin *Bhima*. One of the presumed spectators is already in the Cambodian

1 See *United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located at Sotheby's in New York, New York*, No. 12-cv-2600-GBD (S.D.N.Y.).

2 See previous articles in the *IFAR Journal*, Vol. 13, no. 4 (2013), pp. 17-23; Vol. 14, nos. 1 & 2 (2013), pp. 11-13.

FIGURE 2. ***Temple Wrestler,*** **Cambodia, Koh Ker, Angkor Period, c. 925-50. Sandstone. 61 ¾" (156.8 cm). Norton Simon Museum, Pasadena. (M1980.15.S). Acquired in 1976. Photo © 2012 Norton Simon Art Foundation.**

National Museum—a statue of two fighting monkey kings. The Metropolitan Museum repatriated two of the seven onlookers last June when it returned the two kneeling attendants that had flanked the entry to the museum's Southeast Asia gallery since 1990. Those two pieces are also now in Cambodia's National Museum; the *Duryodhana* will likely join its former companions there. It remains to be seen whether the statue will be reunited with its feet, which were left in situ in Cambodia when the rest of the statue was removed (some say "hacked") from the temple grounds.

The *Bhima* **(FIG. 2)** has been in the Norton Simon Museum collection in California since 1980. Sotheby's relied in part upon the *Bhima's* undisputed presence there when it chose to import the *Duryodhana* into New York for auction. Nonetheless, Cambodia has now requested the return of the *Bhima* alleging that, like the *Duryodhana*, it was stolen during the bloody Cambodian civil war of the 1970s and its aftermath. According to UNESCO, Norton Simon officials are set to visit Cambodia to discuss the *Bhima's* potential return this year. Cambodia has also requested the return of other sculptures suspected to have originated from the Prasat Chen temple from the Cleveland and Denver Museums of Art.

And so, the odyssey of the Khmer warriors and their spectators continues.

—S.F. and **A.M.G.**

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ERRATUM

Figure 14A on p. 29 of Volume 14, no. 3 was incorrect ("Two Frida Kahlo Portraits: One Found, One Confirmed"). What should have been an x-radiograph of the newly discovered portrait was inadvertently replaced with a transmitted light infra-red digital photograph. Below are the correct images and caption for Figures 14A & B. We have placed the transmitted light infra-red digital photograph (previously published as 14A) in-between the two images in order to show additional aspects of the under layers of the portrait revealed by the different technical processes. Information from these images as well as the infra-red reflectogram shown in Figure 15, p. 30, were used to make the schematic outline in Figure 14B.

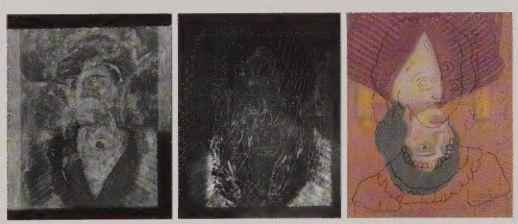

FIGURE 14A (far left). X-radiograph showing the inverted underlying portrait. **FIGURE 14 B** (far right). Schematic outline of the underlying portrait positioned over the inverted *Portrait of Miriam Penansky.* In the center is the transmitted light infra-red digital photograph.

RECENT CPAC ACTIVITY: U.S. RENEWS IMPORT AGREEMENT WITH CHINA; SIGNS NEW AGREEMENTS WITH BELIZE AND BULGARIA

Over the past year, the Cultural Property Advisory Committee (CPAC), the State Department advisory body regarding requests from foreign countries to restrict the importation into the United States of certain cultural objects in jeopardy of pillage,[1] has renewed the U.S. Memoranda of Understanding (MOU) with China and Cambodia[2] and enacted new MOUs with Bulgaria and Belize. This brings the total number of MOUs currently in force to 15.[3]

Under the U.S. *Cultural Property Implementation Act* (CPIA) of 1983—the implementing legislation for the 1970 *UNESCO Convention*[4]—countries seeking U.S. import restrictions on their endangered cultural property must submit a formal request to CPAC, which, after review, makes a recommendation to the U.S. President or his designee, the State Department. If granted, the U.S. and the requesting country sign a MOU, a bilateral agreement, outlining the terms, including the steps both countries intend to take to restrict the flow of designated types of objects into the United States. The MOUs remain in effect for a period of five years, but may be extended an indefinite number of times, subject to U.S. approval. An item covered by a MOU requires an export permit or proof that it was exported from its country of origin prior to the date of the relevant agreement.

CHINA

The China-U.S. MOU was originally enacted in January 2009 after several years of debate and over objections by U.S. museums and collectors who contended that the biggest market for Chinese archaeological material was China itself. The renewed agreement, which went into effect on January 14, 2014, continues import restrictions on certain archaeological material dating from the Paleolithic Period (approximately 75,000 B.C.) through the end of the Tang Dynasty (A.D. 907). One revision clarifies that it applies to monumental sculpture and wall art at least 250 years old as of January 14, 2009. In addition to the restrictions, the renewed MOU also encourages China to do more to protect and document its cultural property; to educate its people about the objects; and to cooperate with American institutions through joint archaeological digs and loans of cultural objects for study and exhibition in the U.S.

BULGARIA

The new MOU with Bulgaria, enacted the same day (January 14, 2014), came after more than two years of debate and strong opposition from coin collectors, objecting to the possible inclusion of coins among the restricted items. The agreement restricts the import of archaeological material from Bulgaria dating from the Neolithic period (7500 B.C.) through approximately A.D. 1750 and ecclesiastical ethnological material dating from the Bulgarian Middle Ages, beginning in A.D. 681, through approximately A.D. 1750. Restricted items include various items of sculpture and certain tools, weapons, vessels, paintings, and religious ceremonial items. Of note, given

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1 For more about the composition and operations of CPAC, see: "The Who, What, Why and How of the Cultural Property Advisory Committee (CPAC)," *IFAR Journal*, Vol. 10, nos. 3 & 4, pp. 24-55.

2 For IFAR's coverage of the renewed MOU with Cambodia, please see *IFAR Journal*, Vol. 14, no. 3, p. 19.

3 For the full texts of the MOUs and various other international cultural property legislation, see IFAR's Art Law & Cultural Property Database: *http://www.ifar.org/art_law.php* or the website of the U.S. State Department: *http://exchanges.state. gov/heritage/index.html.* The latter site also includes images of types of restricted objects.

4 The full title is: *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,* 17 November 1970.

the contentiousness surrounding the inclusion of coins in MOUs since they were first introduced into the agreement with Cyprus in 2007 and incorporated into the agreement with China in 2009, is the inclusion of coins from the First and Second Bulgarian Empire and the Byzantine Empire, from approximately the fourth century A.D. to A.D. 1396. Ottoman coins from A.D. 1396 to 1750 are also included.

BELIZE

The Belize-U.S. MOU, effective last year (February 27, 2013) but not previously reported in *IFAR Journal*, imposes import restrictions on archaeological materials dating from the Pre-Ceramic Period (approximately 9,000 B.C.), Pre-Classic, Classic, and Post-Classic Periods of the pre-Columbian era through the Early and Late Colonial Periods (ending approximately 250 years ago). Restricted items include categories of sculpture, vessels, tools, jewelry and other objects made of materials such as stone, metal, ceramic, bone, shell, wood, and glass. The agreement, combined with previous agreements with Guatemala, Honduras, and El Salvador, is intended in part to reduce trafficking in Maya archaeological artifacts.

—**A.M.G.** and **S.F.**

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PROPOSED NY STATE BILL PROTECTING ART EXPERTS IS 45+ YEARS IN THE MAKING

Fear of liability for providing opinions on art authenticity is not new. In the late 1960s, a bill under consideration to the New York State Legislature that was aimed at protecting experts from lawsuits when giving opinions did not go forward. In the wake of that failure, IFAR was created. The Attorney General of New York, Louis J. Lefkowitz, called for the creation of an impartial nonprofit that could, effectively, serve as an administrative and legal framework for specialists to render opinions without fear of liability. The Assistant Attorney General in charge of art fraud, Joseph Rothman, was one of IFAR's founders. The Authentication Research Service created then remains one of our core activities.

Fast forward to 2014. The fear of liability still exists and has led to the well-publicized disbanding of several authentication boards and the refusal of many individuals and artists' foundations and estates to give opinions.

On March 6, another bill was introduced in the NYS Legislature that aims to protect art experts—broadly defined—from lawsuits. Perhaps the time is right. The bill, co-sponsored by Assembly Member Linda Rosenthal and State Senator, Betty Little, and supported by the New York City Bar Association, was co-authored by attorneys Judith Bresler and Dean Nicyper. Bresler and Nicyper have worked on the bill for years, soliciting comments from the field. While the proposed bill cannot eliminate all risk, it is intended to reduce "frivolous" (not meritorious) civil lawsuits against people giving "good faith" opinions by: insisting that any claims be made with particularity and specificity—that there be "clear and convincing evidence" in order for a suit to be brought—and that an authenticator who prevails will be able to recover reasonable legal fees. Although most lawsuits against specialists, even today, will be dismissed or won by the specialist, it comes at great financial cost.

The proposed bill (A9016/ S6794), if adopted, would result in changes to Articles 11 and 13 of the NYS Arts and Cultural Affairs Law. IFAR is not a disinterested party and is supporting the bill.

—**S.F.**

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COME BACK IN TWO HOURS FOR YOUR FORGERY

AARON MILRAD AND CHRISTIAN ORTON*

In June 2011 Leon Amiel Jr. was sentenced to two years imprisonment by a U.S. District court for his part in a ring that sold fake prints of Salvador Dalí and other high profile artists.[1] Amiel Jr. is the grandson of New York art book publisher Leon Amiel ("Amiel Sr.") who was a major producer of fake prints in the 1980s. Amiel Sr. was able to utilize new developments in photomechanical reproduction of the late 1970s to make thousands of fakes that were nearly identical to the original prints. Although he died before federal investigators could catch up with him, Amiel Sr.'s business was continued by family members who were ultimately caught and convicted for their activities.[2] Nearly 70,000 fakes were destroyed by the authorities, but a collection of his grandfather's prints remained intact and available for Amiel Jr. to resume selling to unwitting buyers on eBay until he too was caught and convicted.[3]

The legacy of the Amiel family illustrates how advances in technology have made the forgery and sale of artwork easier and its detection harder. Today, this has progressed to the point where it is possible to manufacture copies of paintings with virtually identical 3D brushwork as the original, such as the five Vincent van Gogh masterpieces being reproduced for sale by the Van Gogh Museum in Holland through advanced Fujifilm technology **(FIGS. 1-3).**[4]

The rapid development of 3D printing technology has also made it possible to reproduce three-dimensional artworks themselves. The forgery of sculpture and the material arts will no longer be confined to skilled craftsmen, but will be accessible to a new class of "technician" forgers adept at manipulating and even advancing new technologies. Because 3D printing has the potential to achieve an exact likeness of the original artwork, the detection of fraudulent works will become more difficult, requiring more emphasis on techniques of authentication.

IMITATION AND FORGERY

The copying and imitation of great art has long been a part of the art world. In the Western tradition, young apprentices would imitate their masters in order to learn technique as part of the process of artistic growth. In the Chinese painting tradition, precise imitation was a form of flattery and considered to be both a demonstration of the artist's own skill and a tribute to the greatness of prior masters. However, as the art industry has developed, and the value of the works of established artists has increased, imitation not as flattery but as forgery has introduced an undesirable element of risk into art collecting.

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*Aaron Milrad and Christian Orton ©2014. Aaron Milrad is Counsel, Dentons Canada, LLP and the author of *Handbook on Art and Cultural Property Law* and *Artful Ownership* (2000). He is also a member of IFAR's Board of Directors. Christian Orton is an Associate in the Financial Services Group at Dentons Canada, LLP.

1 "Selling fake Dalí prints gets man two years—Art fraud a family business for Leon Amiel Jr.," *Chicago Tribune* (15 June 2011), online: < http://articles.chicagotribune.com/2011-06-15/news/ct-met-art-fraud-sentencing-20110615_1_art-fraud-fake-dali-prints-michael-zabrin>

2 Mary Morabito Rosewater "The Persistence of Amiel—Third Generation Dalí Forger Now Doing Time," *IFAR Journal,* Vol. 13, nos. 1 & 2 (2012), pp. 3-5.

3 Hillel Levin, "Confessions of Art Fraud King Michael Zabrin," *Chicago Magazine* (25 October 2011), online: Chicago Tribune Media Group < http://www.chicagomag.com/Chicago-Magazine/November-2011/Confessions-of-Art-Fraud-King-Michael-Zabrin/index.php?cparticle=1&siarticle=0#artanc>.

4 Sara Webb, "Van Gogh copies in 3D look almost real, cost 25,000 euros," *Reuters News* (September 13, 2013), online: < http://www.reuters.com/article/2013/09/13/us-art-vangogh-copies-idUSBRE98C0QZ20130913>.

FIGURE 1. Relievo of van Gogh's *Wheatfield under Thunderclouds.* Van Gogh Museum, Amsterdam.

FIGURE 2. Detail of Relievo of *Wheatfield under Thunderclouds* Van Gogh Museum, Amsterdam.

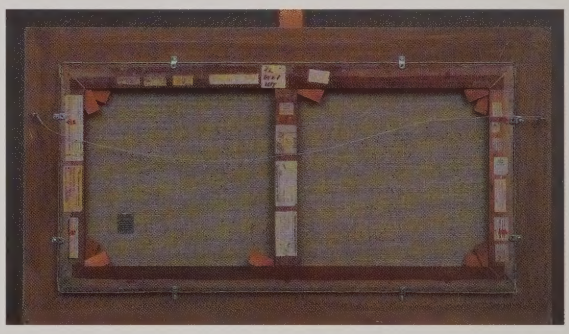

FIGURE 3. Back of Relievo of *Wheatfield under Thunderclouds* showing labels and markings. Van Gogh Museum, Amsterdam.

Forgery, in this sense, denotes the deliberate imitation of style and technique to pass off a work of art as having been created by another artist usually of greater fame and market value. Many infamous forgers have produced fakes by passing off their work as newly discovered works or pastiches of existing works by popular masters. The Dutch forger, Han van Meegeren, is a well-known example of this. He produced works that were attributed to Johannes Vermeer and sold them as such before confessing to his fraud.[5] More recently, Wolfgang Beltracchi was convicted by a German court for thousands of forgeries that he described as the "unpainted pictures of other artists."[6]

The extreme manifestation of imitation is the identical copy. Copying an artwork created by the free hand of an artist (as painting often is) has historically required a high level of skill and craftsmanship. It is more difficult to make a replica of a known artwork than to pass off a stylistically consistent forgery as being previously unknown when it is subject to the scrutiny of experts who are intimately familiar with an artist's work and career. Advancing technologies have made valuable works increasingly prone to forgery through unauthorized reproduction by a new class of forgers. Just as Amiel Sr. took advantage of technology in his day, it will not be long before other opportunists will learn to employ cutting-edge 3D printing technology to make convincing forgeries of sculptures, ceramics, antiques and other valuable 3D objects such as jewelry.

3D SCANNING: MAKING THE BLUEPRINT

3D printers operate according to the data stored in a digital file, so the first step in the process is to use computer-assisted design ("CAD") software to produce an accurate 3D image that will serve as a digital "blueprint." Scanning technology is capable of generating such blueprints, and recent advances have made it possible to produce high quality results inexpensively and with relative ease.

5 Denis Dutton, "Han van Meegeren," *Encyclopedia of Hoaxes,* Gordon Stein ed (Detroit: Gale Research, 1993), online: <http://denisdutton.com/van_meegeren.htm>.

6 The exact number of his forgeries is not known, but Beltracchi claims to have forged work by more than 50 artists including Max Ernst, Fernand Léger, Heinrich Campendonk, André Derain, and Max Pechstein: See "Interview with Wolfgang Beltracchi: Confessions of a Genius Art Forger," *Spiegel* (9 March 2012) online, Spiegel Online International <http://www.spiegel. de/international/germany/spiegel-interview-with-wolfgang-beltracchiconfessions-of-a-genius-art-forger-a-819934.html>.

3D scanners are already employed in the research and preservation of art.[7] Researchers at the University of Leuven, Belgium, have used 3D scanning as a forensic tool to analyze and verify the brushstrokes of a disputed painting attributed to Peter Paul Rubens.[8] In another example, conservators at the Institute of Information Science and Technologies in Pisa, Italy, used 3D scanning as a modeling tool to virtually reassemble the statue La Madonna di Pietranico (shattered in the 2009 earthquake in the Abruzzo region) before commencing the physical restoration process.[9]

Cultural institutions have also started using 3D scanning as a tool to document their artifacts.[10] Recently, the Smithsonian Institution announced an initiative to make some of its massive collection available to the public through 3D models. Key objects of the collection being scanned include the Wright Brothers' first airplane, Amelia Earhart's flight suit and a Civil War gunboat.[11] Clearly, 3D scanning will be increasingly useful for generating databases of 3D-modelled artworks; however, as galleries, museums and collectors develop these databases, the potential for the 3D models of their sculptures, artifacts, and artwork to become widely available for potentially nefarious uses will also increase.

DISSEMINATION OF THE "BLUEPRINT"

There is currently at least one initiative underway to scan art objects and disseminate them over the Internet. In June 2013, the entrepreneur Cosmo Wenman announced a project to 3D scan part of the collection of the Skulpturhalle Basel, which contains plaster casts of ancient Greek and Roman sculptures.[12] His attempt to raise money through the crowd-sourcing website *Kickstarter* was unsuccessful, but he maintains his intention to continue with the project and make the data available so that "anyone, anywhere" can access them for their own purposes. On the website *Thingiverse*, where Wenman and others release 3D printable files into the public domain, the *Art* category already contains 3D scans of valuable sculptures for download, including pieces made available by the Art Institute of Chicago.[13]

Even if a 3D digital model is not released generally, it may still become a target of theft to serve as a blueprint for a forgery. This could easily be achieved by a skilled computer hacker, a dishonest technician, or the artwork may otherwise be scanned surreptitiously by forgers equipped with portable scanners.

The company Artec Group, for example, produces a portable scanner that it claims is able to quickly and accurately scan objects of various sizes without the need to move the object or place markers on the object being scanned.[14] In the future it will not even be necessary to purchase special hardware to make high quality portable scans. Microsoft has announced that it is currently developing a mobile phone app capable of producing scans sufficient for 3D printing.[15] With technologies like these, future forgers will easily be able to create digital models of valuable artworks without detection.

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7 3D-Coform, online: <http://3d-coform.eu>.

8 Richard Gray, "Secrets of Rubens and Michelangelo revealed by 3d scans," *The Telegraph* (9 September 2012) online: Telegraph Media Group Limited <http://www.telegraph.co.uk/culture/art/art-news/9530160/Secrets-of-Rubens-and-Michelangelo-revealed-by-3d-scans.html>.

9 Each piece was scanned so that the statue could be virtually modeled before the actual reconstruction process commenced: Roberto Scopigno, "Sampled 3D models for Cultural Heritage: which uses beyond visualization?," *Virtual Archaeology Review* (2012) vol 3, no 5 at 4, online: Virtual Archaeology Review <http://varjournal.es/doc/varj03_005_21.pdf>.

10 Susan C. Kuzminsky and Megan S. Gardiner, "Three-dimensional laser scanning: potential uses for museum conservation and scientific research," *Journal of Archaeological Science* (2012) 39, 2744-2751 at 2746.

11 Associated Press, "Smithsonian unveils 3D scanning, printing initiative to take artifacts beyond museum walls," *The Washington Post* (13 November 2013), online: < http://www.washingtonpost.com/national/smithsonian-unveils-3d-scanning-printing-initiative-to-take-artifacts-to-beyond-museum-walls/2013/11/13/c78c4d68-4c42-11e3-bf60-c1ca136ae14a_story.html>.

12 Cosmo Wenman, "Through a Scanner, Skulpturhalle" (6 June 2013), online: Kickstarter<http://www.kickstarter.com/projects/256381543/through-a-scanner-skulpturhalle>.

13 ArtInstituteChicago, online: MakerBotThingiverse<http://www.thingiverse.com/ArtInstituteChicago/designs/page:1>.

CONTEMPORARY 3D PRINTERS

3D printing is a popular term used to describe certain additive manufacturing technologies, which have been employed by industry since the mid-1980s for various uses including prototypes and small scale production.[16] Among the methods available are fused deposition modelling ("FDM"), selective laser sintering ("SLS"), and stereolithography ("SLA"). Each method proceeds by building up layer on ultrathin layer of material until the final object has been "printed." In the case of FDM, molten plastic is extruded through the nozzle of the printer to build up each layer. SLS and SLA each employ lasers to bond the print material into form in each layer—SLS fuses fresh layers of powdered material on each pass to build up its layers, and SLA works in a similar way, using a liquefied material or resin instead of powder. Each method has advantages and limitations and suitability for different materials.[17]

In 2007, the expiration of important patents opened the way for the development of "home" 3D printing.[18] Since then, as various patents for 3D printing processes have expired, the market for commercial 3D printers has expanded and the technology has become more accessible and widely known.[19] MakerBot Industries LLC, for example, now offers a "desktop 3D printer" for about USD $2,000.[20]

Although coveted by hobbyists, commercially available 3D printers are currently not likely capable of producing objects of high enough fidelity to produce convincing counterfeits—both the resolution of reproduction and the material of the output would be insufficient to fool connoisseurs. Sophisticated industrial printers, however, do produce high resolution outputs in various materials,[21] and 3D printers are widely employed for the production of precision parts in high-tech industries.

Examples include the aviation industry where 3D printers are being used in the manufacture of components that cannot be otherwise made by traditional processes.[22] Otherwise, the medical industry has found a variety of uses for 3D printing from routine dental applications to the production of unique medical implants, such as biotic ears and bone replacements.[23] Scientists are even researching the potential of printing human stem cells that may in the future permit the production of organs for transplant.[24]

INCREASED ACCESSIBILITY

While high quality machines remain expensive and not readily accessible to the consumer market now, competition and development will inevitably make them available in the future and at less cost. The Massachusetts Institute of Technology is helping to pioneer this initiative through the establishment of an international network of "Fab Labs" where anyone can have access to digital fabrication

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14 Artec 3D Scanners, "Heritage Preservation / Art," online: Artec Group <http://www.artec3d.com/applications/#heritage-preservation-art>.

15 Inside Microsoft Research, "3-D Scanning Made Tangible for the Masses" (30 October 2013), online: Microsoft <http://blogs.technet.com/b/inside_microsoft_research/archive/2013/10/30/3-d-scanning-made-tangible-for-the-masses.aspx>.

16 The emergence of additive manufacturing is attributed to Charles Hull who invented "stereolithography" in the early 1980s: David H. Freedman, "Layer By Layer," *MIT Technology Review* (19 December 2011), online: <http://www.technologyreview.com/featuredstory/426391/layer-by-layer/>.

17 Sheldon Burshtein, "3D Printing: Do It Yourself Intellectual Property Infringement" (Intellectual Property: 2013 Year in Review, Challenges of New Technology delivered at the Law Society of Upper Canada Continuing Legal Development series in Toronto, 16 January 2014), [unpublished].

18 Michael Weinberg, "What Happens When Patent Lawsuits Hit Home 3D Printing?" (27 November 2012), online: Public Knowledge <http://publicknowledge.org/blog/what-happens-when-patent-lawsuits-hit-home-3d>.

19 Michael V. Copeland, "Why 3-D Printing Won't Turn Your Home Into a Factory," *Wired* (21 March 2013), online, <http://www.wired.com/business/2013/03/ideas-not-dinner-plates-are-the-future-of-3-d-printing/all>.

20 MakerBot Industries, LLC, "MakerBot Replicator 2", online: <http://store.makerbot.com/replicator2>.

21 Terry Wholers, "Additive Manufacturing Advances," Manufacturing Engineering (April 2012), online: <http://www.sme.org/MEMagazine/Article.aspx?id=49511>.

22 Kevin Bullis, "A More Efficient Jet Engine Is Made from Lighter Parts, Some 3-D Printed," *MIT Technology Review* (14 May 2013), online: <http://www.technologyreview.com/news/514656/a-more-efficient-jet-engine-is-made-from-lighter-parts-some-3-d-printed/>.

23 Liat Clark, "Study: 3D-printed ear made from calf cells and silver 'hears'," *Wired* (May 2, 2013), online: <http://www.wired.co.uk/news/archive/2013-05/2/3d-printed-ear-cyborgs>.

technologies.[25] In the future it is likely that similar initiatives will be undertaken by commercial operators, and it seems that it will not be long before just about anything will be reproduced with ease and at a reasonable price. While this includes the potential to create and reproduce artworks for legitimate purposes, such as is being done by the Van Gogh Museum and the Smithsonian Institute, it also presents opportunities for those with illegitimate purposes.

EXPERT OPINION

Tim Caffrey of Wohlers Associates, a leading consulting firm to the additive manufacturing industry, advised the authors that cutting edge 3D printing processes combined with state-of-the-art 3D scanning are already capable of replicating certain 3D artworks with a high degree of fidelity. A forger with access to these technologies could conceivably 3D print Auguste Rodin's sculpture, the *Thinker*, in identical proportion and with every detail faithfully rendered in bronze. This might be done by employing laser metal-fusion technology, lost-wax casting, or a range of other high-end additive techniques. While the forger would still be required to skillfully apply the surface finishing, and replicating the patina would pose a challenge, such a forgery may be capable of deceiving at least some less sophisticated collectors.

However, Caffrey also noted that 3D printing faces limitations on the scale of the object being reproduced and the materials that can be printed. While a Rodin sculpture might be a candidate for forgery through 3D printing today, a large Richard Serra sculpture would not. It would also be difficult to control the accuracy of a forgery printed in ceramics because of the shrinking that occurs when the material is fired in a kiln. While technology will likely overcome these present limitations, such advances will be driven by the needs of industry. To illustrate, Caffrey pointed out to us that while it may be possible to produce an alloy identical to the bronze used in the *Thinker* for use by a high-end 3D metal printer, the lack of commercial demand for such an alloy makes it highly improbable.

LEGAL IMPLICATIONS

3D printing has the potential to push the art world in new directions. At the least, it may challenge the concept of an original artwork,[26] and the inevitable proliferation of counterfeits may also have various criminal, civil and international legal implications.

Criminal liability could be incurred if an innocent buyer is defrauded. A civil action might be brought for breach of a condition of sale or warranty, or otherwise for misrepresentation or passing-off. International law may have to be relied on to determine the legal jurisdiction that should apply to an action for a forgery created in one country but imported into and discovered or sold to an innocent buyer in another. Copyright disputes will also arise, as was recently seen when 3D model designer, Fernando Sosa, released a 3D printable mobile phone dock in the form of the Iron Throne from HBO's popular television series *Game of Thrones*.[27] Similarly, it is possible that disputes over artworks may arise in other areas of intellectual property law including patent, industrial design and trademark.

For collectors, dealers, galleries, and museums, 3D printing represents an increased risk of being defrauded. Replicas and edition works may be created for such beneficial uses as the preservation and protection of the original work or the substitution of a duplicate for traveling exhibitions, but the range of illicit uses available to criminals and opportunists is palpable.

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24 Larry Greenemeier, "Scientists use 3-D printer to speed human embryonic stem cell research," *Scientific American* (February 4, 2013), online: <http://blogs.scientificamerican.com/observations/2013/02/04/scientists-use-3-d-printer-to-speed-human-embryonic-stem-cell-research/>.

25 Fab Foundation, online <http://www.fabfoundation.org/about-us/>.

26 For a more comprehensive discussion of the impact of technology on originality, see Robert Storr, "An Overview," *IFAR Journal*, Vol. 13, no. 3 (2012) 22-29.

27 Nathan Hurst, "HBO Blocks 3-D Printed *Game of Thrones* iPhone Dock," Wired (13 December 2013), online: <http://www.wired.com/design/2013/02/got-hbo-cease-and-desist/>.

A criminal organization might purchase an artwork legitimately and reproduce it for sale to unwitting buyers. A greedy collector might have a copy destroyed for insurance proceeds, while the original work is safely hidden away for future heirs. A false patron of the arts might donate a counterfeit item for the purpose of obtaining a charitable tax receipt. In addition, a replica, originally created for a legitimate purpose, might be mistaken for an original over time and find its way into the art market causing confusion, especially when the original or another copy eventually comes on the market as well.

These risks will, in turn, place new pressures on insurers to demand higher standards for authentication of the artworks they are asked to insure and may result in higher premiums. ARIS Title Insurance Corporation, for example, has recently announced an initiative to utilize cutting-edge technologies to investigate the authenticity of fine art in the global marketplace.[28]

DETECTION AND PROTECTION

The increasing ability of the 3D printer to make identical copies may eventually confound the ability of connoisseurs and insurers to detect fakes, resulting in an increased emphasis on the role on forensic analysis and the provenance of the artwork.

Despite the precision that 3D scanning and printing are able to achieve, it is still possible to detect a forgery by forensic analysis using techniques that reveal the specific identity of materials such as scanning electron microscopy and x-ray fluoroscopy. In the example of the Rodin forgery, a materials analyst would likely be able to distinguish between the bronze used to pour the original *Thinker* from the bronze used in the counterfeit statue. However, this is not the type of analysis employed in a normal buy/sell situation in the art world today, and it is impractical to expect forensic testing to be relied on extensively.

As Janice Passafiume, senior conservator and forensic researcher for JANA Fine Art PCL Ltd. in Toronto, explained to the authors, forensic labs are not currently set up for authentication of non-controversial artworks and will have to adjust to the increase in demand on their services that 3D printing may cause. Furthermore, to the extent that labs are able to accommodate confirmation requests, it is likely to be prohibitively expensive in common transactions. If forensic testing is to play a larger role in authentication of art objects, Passafiume suggests that a greater emphasis be placed on forensic education and training for art conservators in addition to the expansion of infrastructure.

PROVENANCE

Currently, the most accessible defense against forgeries is establishing a history of the artwork's creation and ownership—its "provenance." Many art specialists and auction houses already require the provenance of a work as a prerequisite to a sale. However, the culture that surrounds collector/dealer transactions does not always lead to rigorous examination. Usually it is only the experienced buyer that knows of, or requires, the background provenance on a purchase. Often the name of the consignor is never declared to the buyer with the excuse of "confidentiality". This is something that must change as the threat of 3D printed forgeries increases.

Dealers will need to exert greater effort to keep track of the provenance of an artwork, and collectors will require documentation to support it. To the extent possible, original documents should be insisted upon. Ideally this would be a certificate of authenticity or even a statement verifying the authenticity of the artwork by the artist, the artist's estate or a respected authority on the artist. Otherwise, an original receipt or a gallery sticker from the gallery that sold the artwork, or evidence of public exhibitions such as a pamphlet, catalogue or a review referring to the artwork would contribute to its authenticity. Even photographs of the

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28 Business Wire, "ARIS Title Insurance Corporation Launches Initiative to Establish International Legal-Scientific Standards for Emerging Authenticity Technologies in Global Art Market" (18 November 2013) online: <http://www.businesswire.com/news/home/20131118006441/en/ARIS-Title-Insurance-Corporation-Launches-Initiative-Establish>.

artwork in authentic contexts will be helpful in establishing provenance.

It is unfortunate that a technology that has so much potential for legitimate use also brings with it such clear risks. But the reality is that the art world already attracts an abundance of fraudulent behavior, and this is likely to increase with the development of 3D printing technology that can be manipulated by almost anyone with access to it. Greater care must be taken by dealers, collectors, galleries and insurers to ensure the authenticity of their artworks.

Just as Amiel Jr. found an opportunity to sell his grandfather's fakes on eBay, so too will other opportunists utilize advancing technology to profit from art fraud.

So what size do you want your forgery?

• • •

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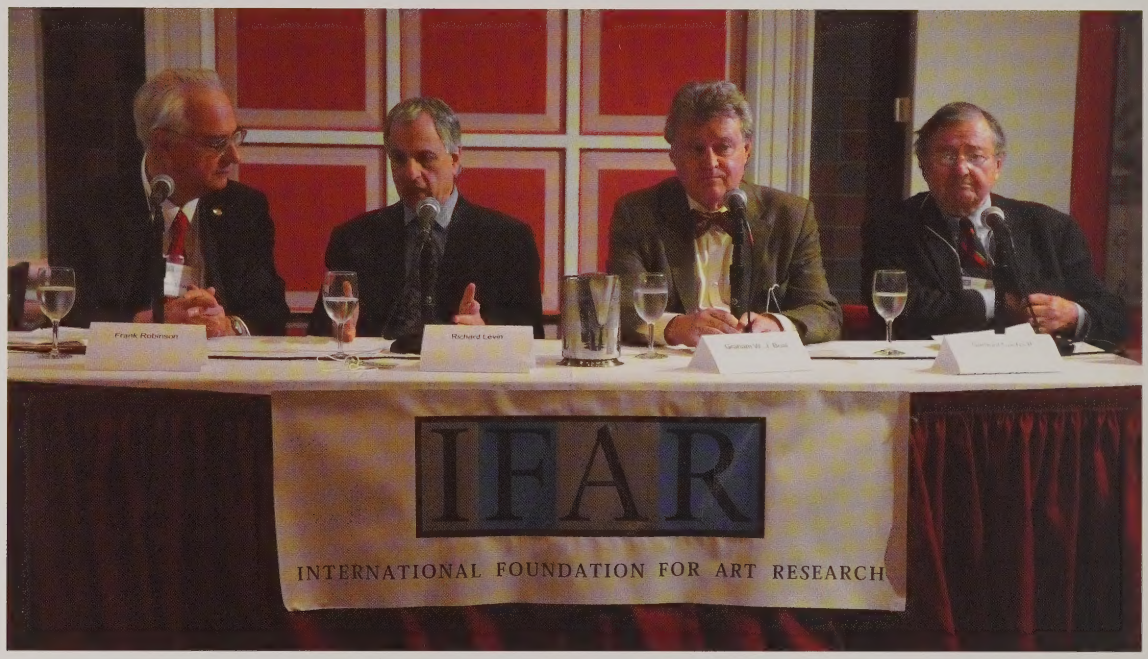
ART FOR SALE?
BANKRUPTCY AND THE DETROIT INSTITUTE OF ARTS

An *IFAR Evening*, October 24, 2013



The *IFAR Evening* panel, left to right: Frank Robinson, Richard Levin, Graham W. J. Beal, and Samuel Sachs II.

EDITOR'S NOTE:

In October 2013, a standing-room-only crowd filled the Grolier Club in New York for an IFAR Evening *devoted to the precarious situation of the Detroit Institute of Arts (DIA). The City of Detroit had filed for bankruptcy protection a few months earlier, in July, putting the art collection of the DIA, owned by the city, at possible risk. At the time of the program, it wasn't clear whether the sale of the art would be legal, let alone wise or moral, or whether even a successful sale would put more than a dent in the city's total debt. IFAR gathered an expert team of speakers—including the CEO/Director of the DIA, a former director of the DIA, the attorney advising the DIA on the bankruptcy situation, and a former director of three museums who had sent a controversial letter to the New York Times about the DIA's situation. Several journalists and others in attendance published articles about the program. Exceptionally, IFAR videotaped the program and posted it, including the Q&A, on its website: www.ifar.org. Here, below, are the edited proceedings of that program and the Q&A. An insert on the next page contains updates that have occurred since our program.*

SPEAKERS IN SEQUENCE:

SAMUEL SACHS II
President, The Pollock Krasner Foundation; Former Director, Detroit Institute of Arts; Member, Board of Directors, IFAR

GRAHAM W. J. BEAL
Director, President & CEO, Detroit Institute of Arts

RICHARD LEVIN
Partner & Head of Restructuring Practice, Cravath, Swaine & Moore LLP

FRANK ROBINSON
Retired Director, Johnson Museum of Art, Cornell University; Rhode Island School of Design; and Williams College Museum of Art

UPDATE

Much has happened regarding the City of Detroit's bankruptcy filing since the October 24th discussion on the following pages, and although the Detroit Institute of Arts is not yet out of the woods, its situation is far less precarious as *IFAR Journal* goes to press. Below, are some of the post-program highlights in this evolving story:

- **December 3, 2013** Judge Steven W. Rhodes, who sits in U.S. Bankruptcy Court for the Eastern District of Michigan, ruled that the City of Detroit, which had filed for Chapter 9 bankruptcy protection in July, could formally enter bankruptcy.
- **December 18, 2013** Christie's delivered its final evaluation of the approximately 2,700 city-owned works in the DIA's collection and its recommendations for non-sale alternatives to obtain value from the collection. The auction house had been hired by the city's bankruptcy emergency manager to evaluate the collection for possible sale. Its fair-market valuation of the city-owned component of the collection came to $454-$867 million, slightly more than its estimate.
- **December 2013** The DIA entered into mediation discussions presided over by federal judge Gerald E. Rosen, who separately had been holding discussions with foundations and philanthropists to help with the emergency.
- **January 13, 2014** Nine national and Michigan-based foundations—including the Kresge, Ford and Knight Foundations—pledged $330 million to help save the art in the DIA from creditors and also reduce cuts to pensioners. On January 28, the Kellogg Foundation joined the coalition, pledging an additional $40 million. Although many details remain confidential, the contributions mandate government commitments, including the conversion of the DIA into an independent nonprofit institution.
- **January 22, 2014** Michigan's governor, Rick Snyder, announced plans to contribute $350 in state money toward the deal to protect the DIA's art and shore up financing of pension obligations, effectively matching the philanthropic pledges. The governor's pledge, which has to be approved by the Michigan state legislature, came soon after the presiding bankruptcy judge ruled against the city's creditors' (pensioners) request for an appraisal of the DIA's entire collection of art (not just the artworks purchased with City of Detroit of funds), in hopes of increasing the total valuation.
- **January 29, 2014** The DIA announced a multi-year plan to raise $100 million to help save itself and also help fund the city's pension obligations. In return, the museum would become independent of the city.
- **January 29, 2014** The City of Detroit sent creditors a proposed "plan of adjustment" to emerge from bankruptcy protection, details of which were kept confidential under orders from Judge Rhodes.
- **February 21, 2014** An official plan of adjustment for Detroit to emerge from bankruptcy was filed with Judge Rhodes. The plan requires court approval and may get adjusted in response to creditors' objections. If municipal employees and retirees do not approve the plan, the $370 million foundation commitment may be put in jeopardy.

HISTORICAL PERSPECTIVE ON THE DIA

SAMUEL SACHS II*

My role is to put into perspective how we got to where things are today. While I will include a few illustrations, they will not show the whole history of the remarkable art museum that is the DIA. Its beginnings are to be found in 1885, when private citizens decided that the city was growing quickly and needed a cultural underpinning—partly in competition with places like Chicago. They banded together to form the Detroit Institute of Arts. Its first building opened in 1888—an appropriately Richardsonian hulk that had everything from moose heads to Aunt Mazy's lace doilies, but also an increasing number of paintings and objects which still pertain today. Already by 1893 the City of Detroit began its first subventions. But the real turning point came in 1919 when the city, and what was called the Founders Society of the museum, decided that a merger was both technically appropriate and beneficial to all parties. It also helped to forestall an admission fee of 25 cents, which was proposed and the city was somewhat against.

"So the marriage was one made in heaven—as long as both parties had money."

In 1919 the Founders ceded to the city the collections that they had to date formed. This is the source of the argument that the art is city property. More about that later. But, quite wonderfully, it was a brilliant marriage because the City of Detroit was the richest, fastest growing city in America. It had money to burn. The automobile industry was churning out cash as well as cars, and Detroit was inordinately proud of itself, as well it might have been. Moreover, the marriage allowed the city to avoid two politically nasty pieces of business: exhibitions and acquisitions. These are things that government does not always warm to, but the private sector embraces them with alacrity. The private sector, however, has enormous trouble raising money for floor wax, guard uniforms, and light bulbs; and this is something the city can do, like rolling off a log. So the marriage was made in heaven—as long as both parties had money. We'll address later the wheels coming off the bus.

FIGURES 1-5 illustrate a few of the purchases made with city funds between 1922 and, basically, 1930; the bronze wine vessel **(FIG. 6)** was purchased with city money as late as 1953. These are some of the great masterworks of the museum—not all of thegreat masterworks of the museum, but a significant number of them, enough to get anyone's attention. But the bulk of the collection was not acquired with city money. It has been given, bequeathed, and purchased with endowed funds.

All the while that the city Founders' marriage flourished, the Founders failed—because they had

*Samuel Sachs II, President of the Pollock-Krasner Foundation, is the former Director of the Detroit Institute of Arts and, more recently, The Frick Collection. He is also a member of IFAR'S Board of Directors.

FIGURE 1. PIETER BRUEGHEL THE ELDER (Flemish, 1525-1569). ***The Wedding Dance,*** c. 1566. Oil on panel, 119.4 x 157.5 cm (47" x 62"). Access. no. 30.374.

FIGURE 2. HENRI MATISSE (French, 1869-1954). ***The Window,*** 1916. Oil on canvas, 146.1 x 116.8 cm (57 ½" x 46"). Access. no. 22.14. ©2014 Succession H. Matisse/Artists Rights Society (ARS), New York.

FIGURE 4. REMBRANDT HARMENSZ. VAN RIJN (Dutch, 1606-1669). ***The Visitation,*** 1640. Oil on panel, 56.5 x 47.9 cm (22 ¼" x 18 ⅞"). Access. no. 27.200.

FIGURE 3. GIOVANNI BELLINI (Italian, 1431/1436-1516). ***Madonna and Child,*** 1509. Oil on panel. 84.8 x 106 cm (33 ⅜" x 41 ¾"). Access. no. 28.115.

FIGURE 5. VINCENT VAN GOGH (Dutch, 1853-1890). ***Self Portrait,*** 1887. Oil on artist board, mounted to a wood panel, 34.9 x 26.7 cm (13 ¾" x 10 ½"). Access. no. 22.13.

FIGURE 6. ***Ritual Wine Vessel (Jue)*** (Chinese, 1388/1122 BC). Bronze, Ht: 22.2 cm (8 ¾"). Access. no. 53.169.

All six works of art (FIGS. 1-6), Detroit Institute of Arts, City of Detroit purchase.

no need—to build an endowment. Thus problems began to arise for the future. Between 1922 and 1927, the city invested in the new building that was to be the crown jewel of the cultural center in Detroit **(FIG. 7)**. The museum is really in every sense the iconic museum because if you go to the old printed version of the *Encyclopedia Britannica* you will see under museum an architectural footprint, and it is, in fact, Detroit. It is the central hall with flanking galleries format that is the heart of great museum architecture. In 1929, of course, the Great Depression came and slowed down the automobile industry enormously. But, by 1933 as things were, depending on whom you talk to, getting worse or getting better, Diego Rivera was commissioned to paint the now infamous murals in the center of the museum called "Detroit Industry," and it still one of the great not only private subventions of the acquisition policy, but one of the great works of art in the museum.

During the 1940s the war ensued; Detroit was making more Jeeps and tanks than they were making private cars, but there was still money to be had and the city continued to do well. In the '50s and '60s, wings were added to either side of the great original classical building. In 1967, however, there were the riots. I am sure most of you have heard about the infamous riots that took place not only in Detroit, but other cities, although notably in Detroit where, of course, the National Guard had to be called in to quell things. It made for a climate that had not been seen in terms of race relations, or public/private relations in the city before. By 1970 the city's subvention to the museum amounted to about 6% of the total, and as the city had less and less money as the results of the riots drove the population to the suburbs, and drove jobs to other cities, things began to decline further. In 1975 the city was still giving $1 million to the museum each year, but state support began, and this was crucial to the then survival of the museum.

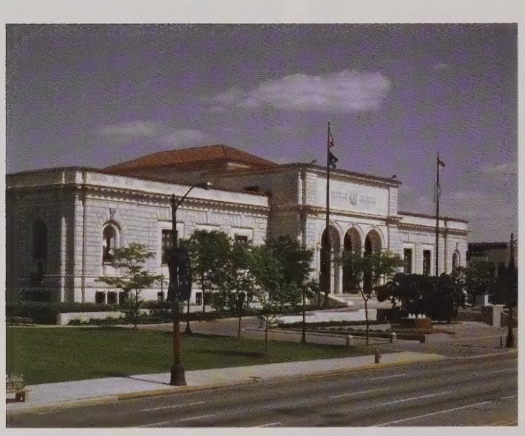


FIGURE 7. The Detroit Institute of Arts.

> "... the *bulk* of the collection was *not* acquired with city money. It has been given, bequeathed, and purchased with endowed funds."

By the time I was tapped to become the director in 1985, the museum was receiving $16 million a year from the state. The state, in effect, was trying to take over obligations of the city lest it go broke, because having the largest city in the state go broke was a great embarrassment, obviously. So legislation was written that any city in the state of Michigan with a population of a million or more was able to have certain nice things happen to it, including what happened to the DIA. Needless to say, there was only one city that met that bogey. I was concerned, as a candidate for the job, and asked the search committee if they, too, were not concerned to be getting such a large portion of their funding from a single source. They said they understood the concern but admonished me, saying that in 1981, which had been the last fiscal crisis in Michigan, the state had not touched a hair on the head of the subvention to the museum because in the overall scheme of things, while $16 million was a great deal of money, it was an accounting error to the state.

In 1991, Michigan elected a new governor; the results were immediate. The subvention to the museum was cut in half. In the middle of an active fiscal year, I took an $8 million reduction in budget. This is sufficient to get one's attention. It caused, as we like to say, "a challenge to manage-

ment," and to meet it and keep the museum open took some rather fancy footwork. But with the help of the Founders' Society and the private sector, while the funds were not made up, a bridge fund was raised. We did creative things, like firing most of the guards and replacing them with volunteers. This, in a union town, was particularly strategic because, of course, union members could be offered the same job at the same rate of pay—it being zero, it was not sufficient to lure them back.

In 1997, just after I had announced that I was leaving to go to The Frick Collection, the City Council, on a second try, passed a bill that we had been trying for some years to get through, that effectively re-privatized the museum. I remind you that words like "privatization" are not used in Detroit.

In effect, the city turned back over to the Founders' Society the day-to-day operations of the museum, and while city funding was no longer much of an issue, and, needless to say, state money was precipitously declining, even from the $8 million level to the point where I think it is something less than $1 million, it kept the museum alive. Graham Beal will discuss the period since 1997, but one of his enormous successes has been to have passed in 2012 a millage [tax] voted by the three counties surrounding the museum. This was something we started to talk about in the '90s as being the ultimate solution, because $16 million a year is the equivalent of a $350 million endowment that didn't exist. But the millage now allows the day-to-day operations to be pretty well covered, and for the private sector to set about building the sustaining funds. But the argument that now pertains is that artworks have been spoken of as potential bargaining chips; that, in bankruptcy, the City of Detroit must put all of its assets on the table. Some people have said that these assets really do not belong on the table. I, for one, hope that they are soon removed.

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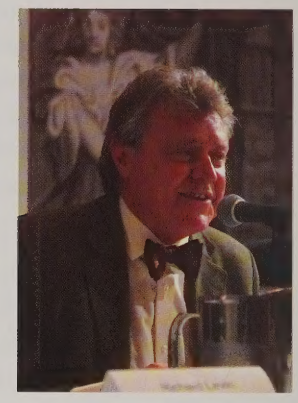
CONT. →

THE DIRECTOR'S TAKE

GRAHAM W. J. BEAL*



Early in my career as a director, in a class I was giving at the business school at the University of Nebraska, I was asked the difference between a chief curator and a director. My answer drew considerable laughter even though I meant it absolutely seriously; the answer was the amount of time I spend with lawyers. That has never been more true than it is now. As Sam Sachs discussed, the fateful marriage was made in 1919. It's ironic. If you look closely at the history, it is clear that it was done to safeguard the collection given the ups and downs in keeping the place going. With the wealth of Detroit, it was seen as giving the museum security. That feeling lasted for about ten years. It is interesting to me, however, that in the 1930s and in the 1970s—the museum actually closed for almost a month in 1975—there was absolutely no discussion about selling works of art. It wasn't on anyone's radar screen. What has happened over the years, perhaps starting in the late '80s, is the enormous attention given to art. The absurd prices that have been paid by individuals of literally limitless wealth has put this issue on the table in a way that it hasn't been before.

"We are really in a situation of preparing for eventualities that we hope will not happen."

In late 1997 the City of Detroit and what was then the Founders' Society signed an agreement to privatize the museum. The Founders' Society became the Detroit Institute of Arts, Inc. That is whom I work for, the fiduciary 501(c)(3) body that runs the DIA on behalf of the city. It was a very painful process to get it passed. The main document gives the Society, as it is called in the document, total discretion in running the museum on behalf of the city, as long as it abides by accepted professional standards. There are a few other things that we have had to take care of as well, but that is the salient point. We act like a private museum. The City Council, despite its overwhelmingly African-American complexion, is fiercely jealous of the collection. They would most hate to see what they call "giving the DIA to the suburbs." So, oddly, as long as the City Council was in place, I didn't feel that there would be a problem because they felt fierce ownership. As part of the agreement that we signed, ownership of the works of art and the building were vested in the city.

As soon as talk about bankruptcy became serious, the collection as an asset was obvious to everyone.[1] Some of us harbored what turned out to be forlorn hopes that the governor would decide that politically the bravest thing to do would be to take it off

* Graham W. J. Beal is the Director, President & CEO, Detroit Institute of Arts. Prior to joining the DIA, he was the Director of the Los Angeles County Museum of Art and the Joslyn Art Museum in Omaha, Nebraska.

[1] Editor's Note: At the time of this program, it was not yet clear that the City of Detroit was eligible for bankruptcy. On December 3, 2013, Judge Steven W. Rhodes ruled that the city could formally enter bankruptcy.

the table, but he took another course. I presume he took the emergency manager's advice to leave us on the table. From my point of view, it has been very strange. Neither I nor my chairman has met with the emergency manager. We were both at the Ford Foundation on Monday here in New York and discovered that Kevyn Orr, the emergency manager, had also met with the Ford Foundation. All of these things are going on, yet I have only had one meeting with two senior individuals, a restructuring specialist and a bankruptcy lawyer, together with my chairman [Eugene A. Gregaro, Jr.]. In that meeting it was made clear to us that if we could come up with a certain sum of money which was not defined, but sums like $20-30 million for 20 years, then maybe we could do something about signing the collection over. Suggestions were made that if we wouldn't sell art that perhaps we could find ways of monetizing it, perhaps renting the collection. This was repeated at another meeting that I wasn't at but that my chairman and the chief operating officer, Anne-Marie Erickson, were.

We have spent considerable time doing our due diligence; looking at the possibilities of what might be feasible from our point of view. Christie's was engaged to evaluate the collection, and as the press release said, "also to help the DIA come up with ideas about how it might monetize the collection." But there is no way. Basically, if you're going to monetize the collection, you sell it. When we needed revenue a few years ago, before the tax was passed, we put two of our main collections on the road. It grossed something like $750,000. This is a completely different order of magnitude. Early on, and at the time it caused the emergency manager to ask Christie's to hold back in its evaluation, the Michigan Attorney General came out with what has been described as a strong opinion—22 pages long—that the DIA's collection may be owned by the City of Detroit, but it is held in the public trust and as such cannot be used to settle the city's debts. After that it becomes much murkier.

> "From my point of view, it has been very strange. Neither I nor my chairman has met with the emergency manager."

This is ultimately a political situation. We cannot get to the governor. As you can imagine, I have some rather influential political individuals associated with my museum, but basically we've gotten a rather effective stiff arm and are in a kind of cloud of unknowing. At the same time, I have to say that we have an extraordinary team. We have Richard Levin; a great, diligent chairman of the board; a chief operating officer; chief financial officer; and a legal team that I feel is second to none. We are really in a situation of preparing for eventualities that we hope will not happen. Just yesterday, at a public hearing, the lawyer for the emergency manager was accused of bargaining in bad faith by not having the DIA's art collection on the table. His response was "Well, haven't you heard, the Attorney General's opinion is that it can't be sold, and absent litigation no works of art will be sold." So, suddenly, we've entered another form of limbo, or purgatory, or whatever. I will hand the discussion on to our legal advisor.

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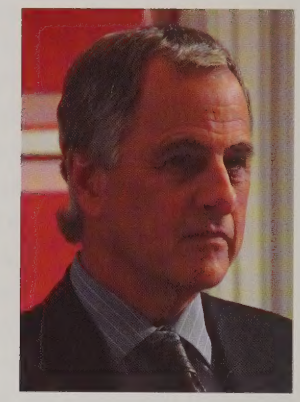
THE LEGAL PERSPECTIVE: MUNICIPAL BANKRUPTCY

RICHARD LEVIN*



I will present an overview of the legal situation in a municipal bankruptcy such as Detroit is in now. There is a lot of misunderstanding about bankruptcy in general, about commercial bankruptcy, corporate bankruptcy, and Chapter 11 reorganization. That misunderstanding, in the popular mind, is heightened in a municipal bankruptcy because the rules are significantly different. So I will discuss those rules and how they might apply in this particular situation dealing with the DIA.

"... there are significant limitations on the court's power in a municipal bankruptcy"

First, unlike in corporate or commercial bankruptcy, there are significant limitations on the court's power in a municipal bankruptcy; this is very explicit in the statute. These limitations grow out of two U.S. Supreme Court decisions from the 1930s when the municipal bankruptcy law was first enacted. The decisions were based on the Tenth Amendment to the Constitution, which says that all powers not vested in the federal government or reserved to the people are reserved to the states. The Supreme Court said, therefore, that although it is permissible for Congress to create a municipal bankruptcy statute to enable cities to use the federal government's bankruptcy power, in doing so neither Congress nor the court can interfere in any way with the state's political or governmental powers; nor may they interfere with any of the city's property or revenues. This is a very important limitation that is not present in any commercial bankruptcy case.

In addition, a provision in Chapter 9 says that the court may not confirm a debt adjustment plan—the document that gets the city out of bankruptcy—unless a city is not prohibited by law from taking any action necessary to carry out the plan. In other words, the federal bankruptcy law does not preempt, take precedence over, or trump state law that would apply to the operation of the city. That is not always true in commercial bankruptcy law where there's federal preemption. The federal law is supreme over state law, and there are specific provisions that recognize that in commercial bankruptcy. So, against that, people often ask, "Will the court sell the art? Will the creditors require that the art be sold?" Those are the questions we often hear. The answer is, only the emergency manager, appointed by the governor to take over the management and governance of the City of Detroit (displacing the mayor and the City Council), not the court and not

*Richard Levin is a Partner & Head of Restructuring Practice at Cravath, Swaine & Moore LLP. He is an advisor to the Detroit Institute of Arts regarding the bankruptcy. Mr. Levin's comments are made on his own behalf and not on behalf of the DIA or his law firm.

the creditors, can decide whether to sell the collection. He is the government of the city of Detroit at this point. Even his decision is, however, going to be subject to two important constraints:

- what does state law say about his authority to sell?
- the emergency manager statute, which says that if he wants to sell any items over $50,000—and some of those items are worth more than $50,000—he needs the governor's express approval on each sale

Now, to the bankruptcy code and the treatment of property in a municipal bankruptcy. In a commercial bankruptcy, all of the property that the debtor owned at the time of bankruptcy becomes subject to creditors' claims, and the court exercises complete control over that property. But, when a court determines what property a debtor owns, the court must look to state law. For all practical purposes, there is no federal law of property, even in bankruptcy. So to determine whether the debtor owns the artwork in the museum in a trust, or whether it owns it outright, and what the city's rights are in that property, the bankruptcy court must look to state law, not federal law. There is no federal law on the subject of charitable trusts or ownership of artwork, and there is a specific provision in the bankruptcy code, which actually doesn't apply in a Chapter 9 case, but I'm going to describe it by way of an analogy. In a corporate case, if the debtor corporation holds assets in trust for a third party, the bankruptcy doesn't break through that trust. The court has control only over the corporation as a trustee, but the beneficiary is unaffected and the property is unaffected by the corporate bankruptcy. That is certainly going to be true in a municipal bankruptcy, where there is no control over property of the city that is in bankruptcy.

The Attorney General of Michigan is authorized, in fact, required by Michigan law, whenever requested by a state officer or a legislator, to give an opinion on the application of Michigan law to a particular situation. The Senate majority leader requested the Attorney General's opinion on the ownership of the art and how it should be treated. The Attorney General wrote a very long opinion that the city holds the art in a charitable trust; that it may not be sold, transferred, or encumbered to pay claims of creditors—whether of the city or the museum—or for any other purpose other than to maintain or to enhance the collection. Obviously, creditors—retirees, pension funds, and bond holders—disagree with that opinion. The courts have said an Attorney General opinion is persuasive, but not legally binding. The matter is either going to have to be litigated—a court will decide whether the Attorney General's opinion is right and the art is protected or not—or there can be a settlement.

> "... only the emergency manager, appointed by the governor to take over the management and governance of the City of Detroit (displacing the mayor and the City Council), not the court and not the creditors, can decide whether to sell the collection. He is the government of the City of Detroit at this point."

Who knows what a settlement might entail? But whenever there is litigation, parties always try to settle. That is just the nature of it, because of the risk and expense of litigation, especially in bankruptcy. Bankruptcy is not like a two-party litigation, a plaintiff and a defendant. It is a massively multi-player litigation. Everything must be aligned right to get a city or even a company that is in bankruptcy to adjust its obligations in a way that it can emerge and not only survive, but thrive, start growing again, and be healthy. If the process of restructuring is all litigation, as we sometimes say, "the patient will die on the operating table." It just takes too long. So the very nature of bankruptcy is to try to get settlements. A litigation is used to posture and position people. Ultimately, courts do decide issues in bankruptcy; they do resolve litigation. For the most part, though, these things get settled, and that's how a company or city emerges from bankruptcy with a plan.

"Bankruptcy is not like a two-party litigation, a plaintiff and a defendant. It is a massively multi-player litigation. Everything must be aligned right to get a city or even a company that is in bankruptcy to adjust its obligations in a way that it can emerge and not only survive, but thrive ..."

What is the plan? The plan is the document that says how the debts are going to be adjusted, what will be repaid and what won't be, and how the city is going to go about doing that, what the future looks like. The way Chapter 9 is written, creditors may not propose a plan; only the emergency manager may do so. This goes back to the idea of the city staying in control, and not ceding control either to the bankruptcy court or to its creditors. As noted, the emergency manager is going to want to reach an agreement with the creditors on the plan; that is the nature of the bankruptcy process. The creditors are demanding that there be value from the collection contributed to the amount to be repaid to creditors. If there is no agreement, the court will determine whether the emergency manager can propose a plan and confirm—court approval is called confirmation of the plan—a plan that, depending on what the emergency manager wants to do, either does or does not include the sale or monetization of the art. That is a future chapter that has not yet been written. Stay tuned. These are long and difficult processes. The emergency manager has said he intends to file a plan with the court by the end of December [2013]. A lot has happened since he first made those commitments and he may be delayed, but he seems to be determined to get something on the table by the end of December, which will then start a process of litigation and negotiation. His term expires next September. He hopes to be done and out of there by then, but it's a daunting task. I wish him luck—without touching the art.

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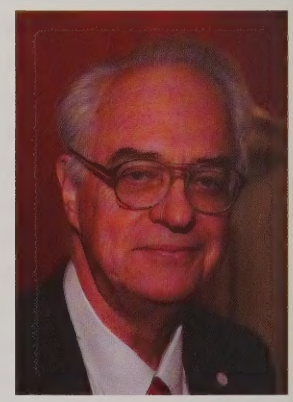
MUSEUMS AND THEIR COMMUNITIES

FRANK ROBINSON*



In a very real sense, I should not be on this panel. My colleagues are in crisis mode, literally saving a great museum, a heroic effort. The idea that Detroit could lose one of the truly great collections in this country is senseless, outrageous, and self-defeating. On the other hand, unlike my colleagues, I am retired from museum work, and I am not talking about the very difficult present but about the unknown future. That future, however, is troubling, for the situation in Detroit, deeply disturbing though it is, has implications well beyond that city. For example, in the relationship of museums to their communities in an economic crisis; or whether selling from a museum's collection and using the proceeds for capital or operating expenses is ever justified; or the relationship of university museums to their universities and to their local communities, or artists who perform "social actions" instead of making paintings or sculpture. My discussion will focus on the first of these issues, the relationship between museums and their communities.

* Frank Robinson is the retired director of the Johnson Museum of Art, Cornell University; the Rhode Island School of Design; and the Williams College Museum of Art.

I was asked specifically to discuss an exchange of letters in The *New York Times* that I participated in, in early August.[1] In that exchange, I tried to present fairly both sides of a moral dilemma in the situation confronting American art museums today, a dilemma that we all feel. Perhaps a crisis is not the time to be discussing nuanced questions of philosophy and morality, especially not in a daily newspaper, but if not now, when?

On the one hand, museums work very hard and very effectively to serve their communities. I don't need to emphasize to IFAR's audience the value and importance of museums as a unique educational, emotional and spiritual resource for a community, and the economic engine within it, and an essential part of its history, identity, and pride. We reach out to everyone from school children to prison inmates to Alzheimer's patients. We are at the center of what is best about America. For me, that is a given.

On the other hand, American museums are, at the same time, confronted with a moral dilemma. The four horns of this dilemma are, first, the significant cost of running and maintaining these large, complex, fragile institutions with their quite legitimate, necessary expenses of insurance, security, exhibitions, publications, programming, and the like, aside from the cost of new construction and the purchase of the art itself. Second, the source of much of our revenues is the government, in the form of tax subsidies, tax exemptions, especially for real estate, and, above all, the tax deduction for gifts of money and art. We would be very different institutions without that support. The third horn of the dilemma is the fact that museums are the custodians of large collections of works of art of great value, pieces of canvas with pigments on them, pieces of bronze or marble, sheets of paper, whose aggregate value is often in the hundreds of millions of dollars, and even in the billions. This is a disturbing development in the market, which has become a global phenomenon. Fourth, many of the cities and towns that we serve are now in deep trouble. This isn't the fault of the museums; we didn't produce this recession, but, inevitably, every community has had to consider its priorities. In short, museums receive significant government help; we are rich in assets, and we are surrounded by struggling communities, and poverty.

Add to this the fact that our audience, perhaps inevitably, is often the privileged: educated, affluent, artistically and technologically sophisticated. There has been a tremendous change in museum outreach and attendance in recent decades—the DIA has been a leader in that effort—but the visitor surveys of some (not all) museums show that the median income of our adult visitors in some cases is in the six figures. And in the case of university museums, where I have always worked, the great majority of our visitors are, or soon will be, on the higher side of the income/education gap. I should add that the reason that this moral dilemma matters is that it arises out of the deep commitment of museums to serve their communities.

"My exchange of letters in *The New York Times*—what they call the "Sunday Dialogue"—ended with my asking, perhaps too provocatively, "How many lives is a Rembrandt worth?" This dialogue generated over 150 emails and letters, articles on two blogs and an online newspaper, phone calls, a colleague asking me to talk to a graduate seminar in museum studies, and people stopping me on the street as I walked the dog."

It is a given for me, and, I suspect, for everyone in this room, that museums are good citizens and are worthy of the support they receive. But it is not a given for everyone. Senator Grassley of Iowa is not alone in saying that museums are elitist and questioning whether they should receive special treatment. My exchange of letters in *The New York Times*—what they call the "Sunday Dialogue"—

1 "Sunday Dialogue: Sell Masterpieces to Help Save a City?" Letters to *The New York Times* published Sunday, August 11, 2013.

ended with my asking, perhaps too provocatively, "How many lives is a Rembrandt worth?" This dialogue generated over 150 emails and letters, articles on two blogs and an online newspaper, phone calls, a colleague asking me to talk to a graduate seminar in museum studies, and people stopping me on the street as I walked the dog. Almost everyone said they loved museums, but a number added a "but" to that. Among my fellow museum directors, several thanked me for "provoking" a discussion of this issue. Two philosophy professors actively felt that no, museums did not deserve government support. Two museum trustees phoned me, separately, to say that they supported museums passionately, but that they were "relieved" to hear a museum person raise this issue and discuss its moral complexities sympathetically.

"There is always the temptation to cash in your assets. About four years ago, a dealer phoned me and offered Cornell $104 million for our *Walking Man* by Giacometti, the soul of the collection. ... I said "no," and so did the president of Cornell, to whom the dealer wrote after talking to me."

So here is the problem: what do we do about it? I don't have any magic answers. One answer, of course, would be to sell and use the proceeds for what some people might perceive to be more urgent needs. There is always the temptation to cash in your assets. About four years ago, a dealer phoned me and offered Cornell $104 million for our *Walking Man* by Giacometti, the soul of the collection. In this recession, that $104 million would have been helpful, but I said "no," and so did the president of Cornell, to whom the dealer wrote after talking to me. But we were lucky; we were stable financially, and we had the right president. Brandeis University, in a very different financial situation, had the wrong president, and made the wrong choice—to try to sell the collection and close the museum. So the temptation to sell is always there, but it has to be resisted.

Another answer is to do our job even better, to reach out to everyone even more effectively, whether through museum mobiles—an idea first tried out in the Thirties—or pop-up museums, "social actions" by artists like Thomas Hirschhorn, or creative and far-reaching education programs for children and adults, which we all do so well. And we should not give up on presenting our great and surprising exhibitions; the most popular show in the history of the RISD museum in Providence, for example, was the art of the Egyptian Copts—hardly, at the time, the sexiest of subjects. Of course, this kind of effort will require new priorities and new resources, always a tough sell. Nevertheless, by being open to a discussion of this moral dilemma, perhaps we can forestall problems that all museums share and strengthen our position in our communities. If we do our job effectively and convincingly, we might even be able to win over the Senator Grassleys of this world. In other words, it behooves us to remember, as we walk in to work every morning, that homeless people are sleeping on the museum steps, even if we can't see them. How do we deal with that? What do we do?

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ART FOR SALE?
BANKRUPTCY AND THE DETROIT INSTITUTE OF ARTS

Q & A

SHARON FLESCHER (SF): Before opening the program to questions, I would like to mention that a petition supporting the DIA is being circulated by Harvard professor Jeffrey Hamburger, which as of today [October 24] has more than 6,000 signatures. The petition is available electronically on www.change.org. Now, to questions.

Q Do all of the articles, letters, and petitions do any good in terms of what's happening now in Detroit? It's moral support, we know, but is it likely to have any effect? Is Kevyn Orr, the emergency manager, sensitive to this kind of response from outside the Detroit community?

A **GRAHAM W. J. BEAL (GB):** I've never met the man; I can't speculate on his state of mind. He has made statements like "I don't want to sell the art. I don't want to go there." "You don't sell irreplaceable assets." And on *60 Minutes* [October, 13, 2013], which I missed but I did see a clip, he talks about "selling the family silver" or something like that.

A **RICHARD LEVIN (RL):** He said that when New York was in financial trouble in the 1970s, it "didn't have to turn Central Park into condos."

A **GB:** So, on the one hand, that is the noise coming out of his office. On the other hand, we are dealing with individuals who are sending other messages. His spokesperson William Nowling is, from our point of view, trying to put the museum back on foot. We indirectly hear things like, "If you don't do it, Kevyn Orr will." So there are all of these mixed messages. I would like to maintain that a dead DIA runs counter to what, ultimately, Orr's charge is, which is to put the city back on the road to prosperity and success. The reason I say a "dead DIA" is that selling a dozen or so spectacularly expensive works of art could solve some financial problems, but, as Sam Sachs mentioned, there is a tax which was passed by three counties that provides $24 million of our approximately $31 million annual operating costs. We have to deliver specific services for those taxes. Each county has an arts authority. Two of those arts authorities and two of the county commissions have said that if a single work of art is sold from the DIA's collection, they will regard that as a breach of our agreement, and they will suspend the millage. If that happens, then the DIA goes back into the position we were in before the tax passed last year, what one of our trustees appropriately described as the nonprofit equivalent of a controlled liquidation. We wouldn't close immediately, but, ultimately, we would shut down.

By the same token, Kevyn Orr can sell the art if he voids the agreement that the Society has with the city. In doing so, the city gets back on its books a $35 million a year operation, including capital costs on top of the $31 million operating budget, an institution that, even if closed, costs as much to maintain—about $5-6 million a year—as Belle Isle, which everybody talks about.

> "I would like to maintain that a dead DIA runs counter to what, ultimately, Orr's charge is, which is to put the city back on the road to prosperity and success."
>
> —Graham W. J. Beal

A **RL:** Just a mothball.

A **GB:** Yes, just a mothball. So, those are the kinds of considerations going around. I continue to be optimistic. My chairman and the board feel strongly that selling the art is not what we're going to be doing. We'll find out.

Q **SAMUEL SACHS II (SS):** The city has some other interesting assets; it owns the zoo. Is there discussion about selling the polar bears?

A **RL:** There was a discussion about the zoo, but a zoo and animals are not an asset; they're a liability. Never buy anything that eats.

Q **SS:** How about the water department?

A **RL:** The water and sewer department services not only Detroit, but the entire metropolitan area. There is a discussion about restructuring the water department in a way that could bring substantial value to the city and at the same time give the counties some control over the water and sewer department that they don't currently have. We hear that mentioned in the press now and then, but we don't know what's going on in those discussions, if anything.

Q **SS:** Are there other assets in play that galvanize popular opinion?

A **RL:** The three assets we've heard about are the DIA, water and sewer, and Belle Isle, an island on the Michigan side of the Detroit River that is a recreational park of the city.

A **GB:** A Frederick Law Olmstead designed park.

"We really are in this sort of cloud of unknowing; not getting straight answers."

—Graham W. J. Beal

Q I question Mr. Robinson's use of language. He kept repeating the words "moral dilemma." That is a concept that I have great trouble with because it is no more appropriate if you view the museum as a vehicle of the rich to try to tear out those assets and maintain the current standard of living of people who are benefiting and who contributed to the bankruptcy of the city. Is it not a moral dilemma that the people who are on pensions, who may have made illicit contracts with the politicians in order to vote for them and maintain their standard of living, that in effect caused the bankruptcy? An opportunity is created to reduce the payments to these people and in turn reduce the drain on the city's revenues and bring it closer to balance than to claim the perpetuation of a bankruptcy. So I think his terminology of "moral dilemma" is very value oriented and only shows part of the picture. His discussion was focused on that, as opposed to the causes of the bankruptcy and the need to change the current situation.

A **FRANK ROBINSON (FR):** I absolutely agree with, certainly, the first part of your statement that the museum should be supported. I think—I hope—I said that it is not to blame for the inefficiency, the corruption, that is evident in the city. I profoundly believe that the works should not be sold. About the second part of it, I'm not sure why these pensioners—firefighters, schoolteachers, policemen and so forth—are complicit in the downfall or the decline and the corruption of the city. So, there I might disagree with you.

A **RL:** I don't know the situation in Detroit, so I'm speaking only generally. Many cities require their employees to live within the city. There was a time when Detroit was one. I can't, of course, tie this to the retired employees of the city because it's a much bigger population than just the city. But let me just give you by way of analogy, what happened in the city of Harrisburg, Pennsylvania, where I was involved in their attempt at a workout. People asked, "Why should the residents suffer for what their corrupt government did?" My response was, "Who elected the corrupt government?"

Q I have a political question for Graham Beal. The governor is unreachable, behind a steel wall, perhaps, and yet the Attorney General has written, as you characterized it, an extensive opinion on this. Are they in the same party? And, is it possible that the governor, having appointed the emergency manager, has stepped back to let his appointee handle this in a first instance? Or, is there some other explanation why there seems to be such a different public position between the governor and the Attorney General?

A **GB:** The governorship and both houses of the state legislature are controlled by the Republicans, and the Attorney General is a right-wing Republican, to the right of the governor. He also would like to be governor sometime in the not-too-distant future. Confusing. Again, it's very strange, and we really are in this sort of cloud of unknowing; not getting straight answers. We have a very aggressive

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senator, [Senate Majority Leader] Randy Richardville, who asked for the opinion. He put a bill through the Republican-controlled Senate; it went through very quickly, and then it got to the House. The Speaker of the House, who has total discretion over what goes in front of the House, just said "not doing it." Some of us believe he's doing it because the governor has said, "Don't let that bill get to my desk," but I don't know that; that's me making that up completely. So, there is just a lot of talk, a lot of indirect knowledge coming our way.

The paradox for us at the museum is that no one is talking to us. They're talking to everybody else, and yet we're so prominent in the media. It is almost as if the Detroit bankruptcy is about the DIA from the kind of attention we're getting. Because the city owns the art, and because the city owns the building, and we are an organization that's been engaged to run the museum, part of the treatment of us is that, "You really don't have any standing; we can get rid of you any time that we want to." So we are being treated with, I think, a rather studied sort of disdain; trying to wrong-foot us all the time. That's what it feels like for me.

Q I'm a journalist (Lee Rosenbaum). Richard Levin mentioned that these things are usually settled rather than litigated to the bitter end, so I'd like to ask Graham Beal, is there any settlement different from the status quo that would work for you? And, Richard Levin, from what you've seen and heard, what do you think will happen? How would a settlement work out in terms of the DIA?

A **RL:** I'm going to be his lawyer now. We can't talk about settlement possibilities and discussions in a public forum. That question just can't be answered.

Q (cont.): There was discussion about some kind of tour of the collection within the state … is that what you're proposing?

A **GB:** No. That's one of the things that's been thrown out in our direction.

Q (cont.): The *Detroit Free Press* said that it came from the museum, but it did not?

A **GB:** We did tour parts of our collection over the past couple of years, and from that we know that it is not a significant source of income. But the suggestion that we do this keeps coming back to life like some kind of zombie.

Q I (Walter Liedtke) am a Curator of European Paintings at The Metropolitan Museum of Art. … I want to touch upon questions about the efficiency of realizing income from selling off a collection. Firstly, I would think that a collection of this magnitude, to properly realize its value—and now we're talking in the language of your adversaries—cannot be done at a public sale, or even a sequence of public sales, within a decade, I would think, but certainly not within five years. … The curators in my department would all resign if the Metropolitan Museum placed a single bid for any one of your objects. Even if they were from another department. I know that's true of our 105 curators. So, there is no institutional market, I would think, for these works of art. And if you're talking about something like your Dutch collection, which is my responsibility at the Met, I could tell you the five or six people who could potentially bid on Rembrandt's *Visitation*. First of all, they'd be morally ashamed. Secondly, it's not practical to dump that volume of objects—even your Dutch pictures alone—on the market at the same time. You could

"The curators in my department would all resign if the Metropolitan Museum placed a single bid for any one of your objects. Even if they were from another department, I know that's true of our 105 curators. So, there is no institutional market, I would think, for these works of art."

—Walter Liedtke

realize so much more money over a longer period of time. So, suppose you did sell it all efficiently, which I think is impossible, or some significant part of the collection, what percent of the problem that Detroit has would that solve? I think it's actually a very small amount. And, finally, what would the blow to the city be in terms of tourism, education, people who want quality of life out of living in Detroit? Wouldn't all of that offset what money was realized?

"... [A] 'City of Detroit Purchase' doesn't necessarily mean that the funds came from the city of Detroit."

—Graham W. J. Beal

AGB: One of our problems is that it's hard to get straight answers because there's so little in the way of precedent. I hear things such as "[the city's debt is] $18-20 billion, but in fact it's more like $10 billion after they do this, that, and the other." So this goes around. We might concede, if pushed, that our collection is worth a few billion dollars. Who knows? So the whole collection could go and it would only settle a fraction of the debt. I also hear things to the effect that if the whole collection were to be sold, none of it would find its way to the pensioners, against whom we are sometimes set, because the creditors will be lined up first ahead of the pensioners. There are all of these things going around. When we were campaigning for our tax, just over a year ago, one of our patrons agreed to give a rather lavish reception in a part of the city that's not quite Tea Party country, but it's very close. The patron gave a presentation, and the executive for the county, a very powerful, impressive, and effective man called Brooks Patterson, came to that meeting, and said to all of these people who were trying to be polite about whether or not they would vote for the tax: "When I am out in the world and trying to persuade a business to come to Detroit, and I am up against Boston and San Francisco, they have great downtowns. I don't have a downtown. I have the Detroit Institute of Arts. That's what I have to sell when I'm trying to persuade businesses to move to Oakland County."

When the emergency manager's office started talking about evaluating the collection, and said that Christie's had agreed to do the evaluations, I sort of scratched my head. You can't say "You don't know what you're talking about," but as has been pointed out, it just doesn't work that way. So Christie's asked us to send an inventory. I sent an inventory; it was 10-point type; it had one work of art per line; and it was 1,640 pages long. Well that wasn't an inventory they could use. They gradually worked their way through, and then, so I'm told, began to understand, that this in fact was a complex situation, and they might have a few lawsuits on their hands if they started selling works of art that were given by people. Because 90% of our collection, despite the City of Detroit purchases, comes from gifts, as is basically the statistic of most American museums. I speculate, because I have not been told this, that they narrowed it down to the 3,500 works of art that have the credit line "City of Detroit Purchase." I presume it's because they can say: "The city spent this money on art when it had a lot of money, and now it doesn't have any money and it needs money, so surely it's right or reasonable." Again, I haven't been told this. That's my reading into it.

"90% of our collection, despite the City of Detroit purchases, comes fron gifts, as is basically the statistic of mo American museums."

—Graham W. J. Be

We have been doing a fair amount of research in our archives, and have been discovering that the "City of Detroit Purchase" doesn't necessarily mean that the funds came from the City of Detroit. I'm told that there was a fund early in the 1920s, the City of Detroit Art Purchase Fund, that people contributed to as well as the city. Ralph Harmon Booth, one of the founders of the DIA as we know it today, had the Van Gogh *Self Portrait*

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(FIG. 5) on his dining room table for a couple of days before he brought it into the museum to see if the city would like to spend city funds on buying that particular piece from him. We have Minutes showing that he came back from Italy with ten Quattrocento paintings, and again said to the Arts Commission, "If you want to buy these, just give me what I paid for them and you can have them," We know that four came to the museum and have "City of Detroit Purchase" on them. We know that he gave two as outright gifts, and four seem to have disappeared. We don't have the names of those artists in our collection; they may have been reattributed somewhere and our older records don't reveal that. So, even the situation with the "City of Detroit Purchase" isn't as straightforward as you think. That's what Christie's is doing with the 3,500 works of art, and they've already asked for an extension.[1] And, as Richard Levin pointed out, we're calling it an evaluation, not an appraisal, because they're basically going through the galleries and writing down numbers.

Q My question is going to run afoul of Walter Liedtke, whom I respect greatly and know well. I'm an art collector and I love your Baroque painting collection, but, Richard Levin, if you have to sell, is it possible to restrict the sale to only American museums so the collection is still available to the public and doesn't get into the hands of a Russian or a Chinese billionaire, where it disappears forever?

A **RL:** Remember what I said about who has the right to decide whether and what to sell—that's the emergency manager. It's totally within his discretion. If it's in his discretion, I can't get a court to tell him what you just said. If you're a creditor, and the emergency manager wants to settle with you and say "I'm going to raise so much from the museum's collection, but I'm only going to do it subject to these restrictions," are you going to accept that, knowing that, as Walter Liedtke said, it's going to put a huge damper on the market? I don't know what the creditors are going to do. I don't know what the emergency manager is going to do. I do know how creditors react generally, and you can kind of surmise. But more than that I can't tell you.

A **SS:** A scheme was proposed at the time of the Barnes Foundation mess, which was particularly applicable to the Barnes, but it is a good idea, perhaps. They have 160 Cézannes. What would happen if they put 10 of them up for sale, but only offer a 49% interest? So you, a collector, buy 49% of a Cézanne. You have bragging rights; you can hang it over your fireplace. But you agree at the time of the purchase that on your demise you give back your 49%, so in effect the museum has not really de-accessioned anything. And, a bit of an argument here as to how well it might work, since you, the collector, own that 49%, you can probably have a fair market deduction for it when you give it back. This is what Graham referred to as "monetizing the collection." I hope it doesn't come to this either.

A **RL:** So, what happened in Barnes on that? Did anybody believe that was a credible source of value?

A **SS:** They did, but I think it was shot down.

Q (Judith Dobrzynski, Journalist): I have two questions. One is, if I understood you right, Richard, the creditors will likely challenge the Attorney General's opinion. First, do you expect that to happen before December when the emergency manager puts the plan on the table? And in which court would that be challenged, and is there a benefit in one way or the other for the museum, depending on where it goes? My second question is, at the end of the day, it sounds like it will turn out to be an arm wrestling match between the governor and the Attorney General. If the emergency manager works for the governor, he gets to decide. Isn't that probably what's happening?

A **RL:** The ultimate authority, as I said, is with the emergency manager subject to the governor's approval, and whether the court determines that the Attorney General's opinion is right or wrong. In terms of when and where, as Graham said, we

[1] Editor's Note: Christie's evaluation of the DIA collection was published on December 19, 2013.

"Should any of the works of art at the Detroit Institute of Arts actually come on the market, I think there would be a massive boycott. … I liken this to the sale by the Nazis in 1939 of the Entartete Kunst, of works of art plundered from the German museums. There wasn't a boycott of the sale at the Galerie Fischer in Lucerne. But today, in my view, nobody would touch these things, and any auction house that did would be boycotted. I don't think it would happen."

—Richard Feigen

are in clouds of uncertainty right now. … We assume that courts are fair.

A **SF:** Is that the basic assumption in life? Or, just in Detroit?

Q (Richard Feigen): Another element has been alluded to. Should any of the works of art at the Detroit Institute of Arts actually come on the market, I think there would be a massive boycott. Even Christie's has come under a certain amount of opprobrium for having even ventured an estimate. I was called by the press all summer in Austria, and I refused to give any idea. I don't think the auctioneers have a clue what Ruisdael's *The Jewish Cemetery* would bring, or *The Wedding Dance* of Breughel **(FIG. 1)**, or any of these other treasures. They don't have a clue what could come out of the woodwork, or what couldn't. But all I know is that I liken this to the sale by the Nazis in 1939 of the Entartete Kunst, of works of art plundered from the German museums. There wasn't a boycott of the sale at the Galerie Fischer in Lucerne. But today, in my view, nobody would touch these things, and any auction house that did would be boycotted. I don't think it would happen. These are not just part of Detroit's cultural patrimony, they're the nation's, because we had a great industrial revolution here and the riches that that produced, and the automobile industry, happened to flow to Detroit. But it belongs to the country, and they can't possibly sell any of this stuff. Nobody would participate.

Q **SF:** I'd like to interject a question. We have a lot of major art dealers in this room. Is there anyone who would disagree with Richard Feigen's statement?

A (David Nash): I would like to think that Richard Feigen's view about the morality of American buyers is correct, but there are dozens of very rich buyers outside of this country who I don't think care a damn. You have the government of Qatar, which is spending billions of dollars every year on works of art. You have Russian billionaires. I don't know if Chinese billionaires are in the market yet, but there are plenty of other people who would be happy to pick up the pieces.

Q **SF:** So if the museums, according to Walter Liedtke, are not going to touch it. And, according to Richard Feigen, dealers of his stature in the U.S. won't touch it, you feel that without that network, there are enough people who will touch it, that there really is a market?

A (Nash, cont.): I think there definitely is a market, yes.

A **SF:** Scary.

Q Normally the Attorney General is responsible for charitable trusts, does that situation change? Do we have litigation or prior experience with an Attorney General interacting to protect a charitable trust in a bankruptcy situation, particularly with all that's been said about an urban bankruptcy?

A **RL:** Actually, we do. Although I don't know the exact parameters of the situation, in 1999 The Allegheny Health Education and Research Foundation, known as AHERF, Pittsburgh based, ran a bunch of hospitals in Pennsylvania and went into bankruptcy. The Pennsylvania Attorney General was all over that one. Michigan statutes specifically give the Michigan Attorney General the right to enforce charitable trusts, so given his opinion and that statute, we suspect he would be equally involved if this came to litigation.

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Q The American Museum of Natural History just gave its first four Ph.D. degrees from that museum, and four MATs (Masters of Arts in Teaching). The museum has essentially become a university. Isn't that a way for a museum to raise additional revenue as well as getting tremendous public support?

A **GB:** We have been looking at a number of initiatives. We looked at what we were calling an academy where, because there's so little art in Detroit region schools and Michigan in general, we would teach the teachers. By the time you put the resources into it, we once again become a nonprofit. The sums that are being suggested—half a billion dollars—are of a magnitude that is, I think, self-defeating. But we are determined not to be portrayed as uncooperative, so we are looking at all of these options, whether or not I personally think they're realistic. A very diligent group on my board is examining these various options so that we can say, "It doesn't work in the way you might want it to." I like to think the DIA is doing some adventuresome things; doing different things to create something like André Malraux's Museum without Walls, but one thing I've learned is when someone says "How do museums do this?" the answer is, "Which museum are you talking about?" We really are all very different organizations.

A **FR:** Just another point, universities raise most of their money from their alumni, and it would be a long time before you'd have that kind of alumni.

Q **SS:** Has anyone suggested that the state buy or somehow take over the museum?

A **GB:** We have suggested and submitted through our lobbyist to individuals at the state capital that, as we were when Sam [Sachs] was the director of the museum, we construe ourselves again as a state museum. We wouldn't need a huge amount of money each year to get back into that kind of programming. But under that aegis, we are suggesting that the state buy the collection, and it could become a state collection, and this problem could go away forever. I was told that when this was outlined to one of the governor's representatives, the answer was, "We think it's easier if you sell a few paintings."

Q (Alexandra Peers, Journalist): You've traditionally had a very wealthy group of donors supporting the museum. Even with the current problems in Detroit, the families remain fairly well established, and they've been very generous. Is there something a community of people who have supported Detroit and the Institute in the past could do at this point? Is there anything your own donors could do to help you get out of this?

A **GB:** We've been meeting with all of our significant donors—private, corporate, and foundations—and the answer, as it was given by the Ford Foundation earlier this week, is: "We don't do that." What they don't do is give money to be passed on to settle other people's debts. We've been an independent institution now for sixteen years. We have our own pension fund. We had no pension fund when we started in 1997. We have a healthy pension fund that is secure for the people who work for the DIA, Inc. We've done that in sixteen years. When you hear that going back to the '60s the people in charge of the Detroit pension fund, with the knowledge and the votes from City Council, were sending out what are called "thirteenth checks" regularly, and, according to Kevyn Orr, they expended the equivalent of over $2 billion over the decades, my blood pressure is going up just repeating it. That's what people are reading, so you go to a foundation and they say "Well, I don't think so." Foundations and trustees don't feel in any way that it's right for them to respond to the problem with serious funds.[2]

Q (cont.): Like most institutions, your wall of donors actually calls the top level "guarantors." Are they guaranteeing? Are they stepping up for you?

A **RL:** I think that's probably an honorific title.

A **GB:** I'm sorry. Are you suggesting that my supporters should come up with several million dollars to settle city debts?

Q (cont.): I'm asking what's the status of their participation of this process?

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2 Subsequently, several national and local foundations did come up with a proposal to support the DIA and the city's pension fund.

A **GB:** Well, we have been raising—before the millage—up to $18 million a year to keep the DIA's doors open and the museum active. Since 2008, almost every penny of that has come from individuals and foundations. We get fantastic support. But one of the reasons we persuaded everyone that a tax was the best thing to do was because we were seeing serious donor fatigue. I've been through three campaigns since 1999 and raised $360 million out of a community that has all kinds of trouble. So, generosity, I really don't think, is the question with my supporters.

A **RL:** It's one thing to raise money every year to support operations of the museum. But if the museum were to go to donors and say, "We'd like you to raise money to pay the debts that the City of Detroit incurred that have nothing to do with the museum," how do you think they would feel?

A **FR:** People give to winners, not losers.

A **RL:** I don't even need to go that far. People give to the museum to support the museum.

A **SF:** As I understand it, the museum is doing okay. The issue is not the museum. The issue is the city, and the jeopardy that the museum has been put into as a result.

"The great irony is that the museum, dare I say it myself, is a huge success story as far as southeast Michigan is concerned."

—Graham W. J. Beal

A **GB:** Yes. The great irony is that the museum, dare I say it myself, is a huge success story as far as southeast Michigan is concerned.

A **SF:** I think that's an important point in this discussion; that because of the unusual relationship with the city, the museum has been put in jeopardy. But the museum itself is not going bankrupt, and is not at risk of going bankrupt.

A **GB:** Not at all.

Q Is it known whether Christie's will publicly release its findings; how much they're being paid to do the evaluation; and where the money is coming from?

A **RL:** It's public that they were paid $200,000 for the evaluation. Nobody has said that Christie's will publicly release that, so we don't know.

Q I just came back from the DIA and it was an exciting and alive museum. It was not an elitist experience at all, so congratulations on that, Graham. I'd like to know what the art community is doing to get behind you because the DIA is a national museum as well as a Detroit museum. If they asked the Met to de-accession its artwork, the whole country would be in a storm and it would not be doable, and I don't think it should be for the DIA either. What is the art world doing to support you with the emergency manager, and what can it do?

A **GB:** All of this is going on in back rooms. My feeling is that having people like us write to Kevyn Orr, the emergency manager, is what they would expect. I don't think it will have much effect at all. We're really in the hands of a strange legal and political situation, and we are just trying to find our way through a situation that is very blurred.

Q I'm quite optimistic. I don't think that the DIA's collection is going to be sold. I think at the end of this exercise you'll have a very good, complete catalogue of everything you're holding. My question is, have any private individuals sent spontaneous checks? Have you thought of doing a "Kickstarter" and just seeing how the community reacts? Because there has been a story, at least recently, that a Detroit Masonic Temple received a donation from a Detroit native of $140,000 to cover back taxes. So, I hope you are seeing people who are not your donors reacting positively. If you can comment on that. My follow-up question is, when you're out of bankruptcy, will there be a mechanism in place to protect the museum from a similar exercise should it happen again?

A **GB:** Before this situation became quite as adversarial as it has, we talked about how this should be the opportunity to make sure that something like this never happens again. The quid pro quo of us coming up with these vast sums of money would

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be the transfer of the collection away from the city into something of a "safe haven." That is what we were aiming for when we made the outline proposal to individuals in the governor's office and in the legislature about becoming a state entity. That whatever funds the state provided—and Michigan has a surplus right now—would make the collection safe. Obviously, if we go to litigation and it works in our favor, we'd be safe that way too, but that's by no means certain. We've had some contributions from individuals. We talked about the idea of a kind of a Facebook "Legal Defense Fund," but given the nightmare of administering something like that right now, we decided that we would hold back. Ironically, we did some very ferocious cuts a few years ago as we prepared to make the DIA financially stable, and one of the things that we did is now what the city is going to do to save itself tens of millions of dollars, namely, do away with retiree healthcare and go to a monthly stipend instead. That basically freed up a reservoir of funds, so we're in a position of being able to fight this quite extensively.

A **SS:** I'd like to put one little footnote on this, and that is that there are a few works of art in the collection that have what I believe is called a "remainderman clause." They were given with the understanding that they will never be sold, and if the museum does want to sell them, that the work will go to some other recipient. I expect we may see more of such clauses in the future.

A **GB:** In the agreement I mentioned that all the works of art are owned by the City of Detroit, we have gone with making that the default, but the same clause that states that this is the case says that donors may opt not to have the work of art owned by the City of Detroit. So, we have changed our deed of gift. It's not quite finished yet, but we're changing it so that becomes the default: the second half of that clause.

Q I recently inventoried the collection of a collector here in New York who expects to give the collection to the DIA. I asked him, "How do you feel about this situation? Are you anxious about giving your works to the DIA?" and he said, "Absolutely not. This is not going to happen." He is still going to give, with no compunction whatsoever.

Q Given the strength of Michigan's Congressional delegation, I'm wondering if there's been any attempt to lobby at the federal level? I understand that President Obama has rejected federal funds for Detroit, but politicians have been known to reverse their positions.

A **RL:** Have you been watching the press recently about spending in Washington?

Q Yes I've seen the news, but it still does happen.

A **GB:** As far as we know there's no meaningful activity on the Hill.

Q Has anyone spoken about the stadium? The $400 million or so stadium? Why is that not up for grabs? It is privately owned, actually.

A **RL:** I don't know who owns it.

A **GB:** Something like $280 million is going to go toward yet another sports stadium owned by a billionaire. … It's mentioned. But it doesn't seem to raise the kinds of concerns [in Detroit] that I can feel in this room.

SF: I thought it fitting to end by citing a 2,000-year-old quote from Pliny's *Natural History:*

> "King Nikomedes wished to buy Praxiteles' Venus (Aphrodite) in Knidos, offering to discharge the whole of the city's public debt, which was enormous. The Knidians, however, preferred to suffer the worst that could happen, and they showed their wisdom, for by this statue, Praxiteles made Knidos illustrious."[3]

So, a couple of thousands of years ago people knew the value of art. If only we could all take that lesson now. I think everyone will agree that this was a fabulous team of speakers. Thank you.

[3] Pliny the Elder, *Natural History, c. AD 77-79*, (xxxvi.21).

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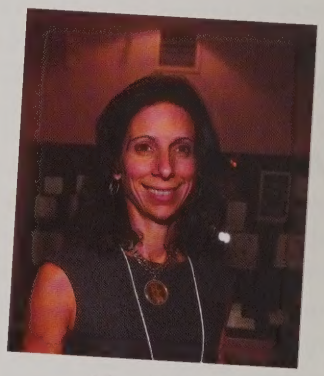
SCENES FROM AN IFAR EVENING

Gertrude Wilmers (left) and Pauline Metcalf.

Richard Lehun and Kate Deimling.

Left to right: Alex Sachs, David Nash, Richard L. Feigen, Samuel Sachs II, and Beth Sachs.



Nina del Rio.

Graham W. J. Beal and Norman Brock.

Left to right: Jack A. Josephson, IFAR Chairman, Samuel Sachs II, and Frederick Beinecke.

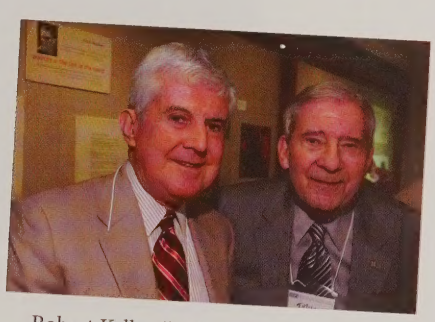
Credit for these photos and all other images of speakers and guests at this program: Steven Tucker.

Alex Serwer, Wendy Ormond, Alisha Siegel, and Jacob Smilovitz.

Annette Blaugrund (left) and Frances P. Harris.

MaryKate Cleary (left) and Veronique Wiesinger.

Judith Dobrzynski.



Robert Keller (left) and Julian Lewison.

Richard Levin, Eric Snyder, and John Cahill.

Irina Tarsis (left) and Magda Saleh.

ARTISTS RESALE RIGHTS IN THE U.S.: OVERDUE OR SHOULDN'T DO?

An *IFAR Evening*, November 25, 2013

The *IFAR Evening* panel, left to right: Philippa S. Loengard, Jerrold L. Nadler, Karyn Temple Claggett, Theodore H. Feder, and Sandra L. Cobden.

SPEAKERS IN SEQUENCE:

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THE HONORABLE JERROLD L. NADLER
Congressman, Tenth Congressional District, New York

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INTRODUCTION

A resale right for visual artists, often called *droit de suite*, exists in many countries, but not in the United States, where it remains controversial. The one state—California—that did enact a resale law, in 1976, recently had its law struck down as unconstitutional. That ruling is currently on appeal to the Ninth Circuit.

On November 25, 2013, IFAR organized a program on the subject because of a confluence of events. The first is the aforementioned appeal. Second, a long-awaited report from the U.S. Copyright Office on the implications of enacting a federal resale right was imminent (it has since been published); and third, Congressman Jerrold Nadler (D-NY) was working on a revised bill in support of a federal resale royalty. The 112th Congress ended with his previous bill—H.R. 3688, the Equity for Visual Artists Act—still in committee. In fact Congressman Nadler, one of the 5 distinguished speakers at the *IFAR Evening*, publicly announced details of his draft legislation—drafted that very day—at the program. Along with the Congressman were 4 other speakers representing different perspectives on this often divisive subject. Several journalists in attendance published articles about the program, which IFAR videotaped and posted on its website: www.ifar.org. Here, below, are the edited proceedings of the program, preceded by an insert highlighting two major updates—the Copyright Office report and the new Congressional bill, H.R. 4103.

UPDATES TO THE *IFAR EVENING* ON RESALE RIGHTS FOR VISUAL ARTISTS IN THE U.S.

THE U.S. COPYRIGHT OFFICE REPORT

On December 12, 2013, the U.S. Copyright Office issued its long-awaited report: "Resale Royalties: An Updated Analysis." While the 81-page report (plus 5 appendices) gives something to each side of the debate, the bottom line is that it found "no impediment" to implementing a federal resale right and "supports the right as one alternative to address the disparity in treatment of artists under the copyright law." This represents a major turn-around from its 1992 report. That said, the Office recommends some limitations that are not in the proposed Congressional bill (see below), including: initially limiting the right to "living" artists; having the royalty apply to sales by galleries and private dealers as well as auction houses; implementing a rate of 3–5%, but only for works that increase in value; and that the royalty apply prospectively for works acquired after the law takes effect.

H.R. 4103: AMERICAN ROYALTIES TOO ACT OF 2014

On February 26, 2014, Congressman Jerrold Nadler introduced H.R. 4103 in support of resale rights for visual artists. Senate co-sponsors are Tammy Baldwin and Ed Markey, and Representatives Louise Slaughter and James Moran are H.R. co-sponsors. The bill differs significantly from its predecessor – the Equity for Visual Artists Act. Namely, it: reduces the threshold value triggering the royalty from $10,000 to $5,000; reduces the royalty from 7% to 5% and places a cap of $35,000 (with a COLA); eliminates the portion of the royalty going to museums; reduces the size of the affected auction houses to those selling over $1 million in art in the year; outlines parameters for the collecting societies administering the fee; and, notably, recommends a study in 5 years to determine whether it should be expanded to cover dealers and galleries. Unlike the Copyright Office recommendations, it is not restricted to works acquired after the law takes effect; would allow for statutory damages; and applies for an artist's lifetime plus 70 years.

AN OVERVIEW

PHILIPPA S. LOENGARD*

Droit de suite is a very timely and controversial issue. I will not be taking a partisan view, however. I will simply try to present the facts and background starting at the very beginning,

The resale royalty is compensation to the creator of a visual work after the initial sale of said work; thus, compensation for secondary market sales. It has been called a tax, a tariff, a duty, and has been compared to royalties received by authors when books are sold, and actors for reruns on television or films shown in secondary markets. In countries with the resale regime, the royalty is sometimes paid to artists for *every* subsequent sale; while in other countries, it is only for the second sale after the initial sale.

"The concept originated in France in 1920, spurred by the image of the starving artist who had created works that had gone on to great fame, notoriety, and value from which he was not profiting."

The concept originated in France in 1920, spurred by the image of the starving artist who had created works that had gone on to great fame, notoriety, and value from which he was not profiting. Rather, he was living in the slums with his poor family while collectors gained the fortune that should have been his. That idea of the resale royalty as something that helps the person—the starving artist—who has created a work but has not received proper remuneration continues to this day. Since the 1920s approximately 70 countries, including many in the European Union and Latin America, as well as Australia, have adopted the provision. Notably, the United States and China, two of the largest art markets in the world, have not, although both have recently entertained proposals, not without controversy. For now, China has put it on the back burner.

The European Union introduced the resale royalty across all of its countries through a Directive in 2006. The term is "life of the author plus 70 years"—the same as copyright. The fee is capped at 12,500 euros; that's the most that a seller must pay to an artist in the artist collecting societies. It's regressive, meaning that the lower values are taxed at a higher rate than the more expensive works. Works up to 50 euros are taxed around 4-5%, while a work generating over 500,000 euros profit is taxed at a low rate of 0.25%, and only on the profit. The royalty cannot be waived or transferred and does not travel with the copyright owner. It remains with the artist, and the artist must be either an EU national or from a country with reciprocal rights.

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So, currently, it would not apply to American artists who sell in foreign markets.

In the UK, one of the other top markets, resale royalties apply to pieces sold for more than 1,000 euros, with the same regressive rates the Directive mandated. Because the UK is such a prominent force in the art market, everyone has been watching how the royalty affects sales. The data, which can be interpreted in different ways by different people, suggests there has been a dip in the British market since the introduction of the resale royalty. But it's impossible to isolate the reasons. There are so many reasons why art sells; I will leave it to other discussants to address this. Australia instituted the resale royalty in 2010, and because it's not part of the EU Directive, it has different ground rules. There, it is a flat 5% royalty payable to artists only on the second transfer of ownership, and only if the sale is over 1,000 Australian dollars. The royalty goes to the artist, as it does in the EU, not to the copyright holder. And also like the EU, the term is the same as copyright. There is a federal collecting society, as is true in countries throughout the European Union, and collectors and sellers must report sales to that collecting society.

That is a description of the largest countries with the resale royalty right. Places like Uruguay and the Philippines have it too, but their art markets are smaller and less significant. Of note, in smaller countries the resale royalty is not consistently applied, a problem that also existed in California.

To recap, under California's 1976 Resale Royalty Act, the royalty was five percent if the sale was more than $1,000, and if the seller either resided in California or the sale took place in California by an auction house or dealer. No royalty was paid if the seller sold at a loss. What the auction houses tended to do was take their large contemporary art sales out of the state and hold them in New York to avoid being caught under the statute. The law was recently struck down as unconstitutional under the Commerce Clause of the U.S. Constitution because it directly affected commerce occurring wholly outside of the state, which is the purview of the federal government. Interestingly, the artists who brought the suit against the auction houses Christie's and Sotheby's, namely, Chuck Close, Robert Graham's estate, and Laddie John Dill, have not yet involved themselves in the federal resale royalty debate. Their case is on appeal to the Ninth Circuit. It will be interesting to see whether the appeal is upheld as unconstitutional and also whether these artists become more vested in the national federal resale royalty discussion.

Let me address briefly Congressman Nadler's recent proposal (112th Congress), The Equity for Visual Artists Act, often called the EVAA, although I believe that he will discuss a revamped bill. The royalty applies only to work sold at auctions for over $10,000. The royalty is a flat 7% of the retail price; no cap on the amount that the seller would have to pay back. That 7% would go to a collecting society or societies, to be established according to criteria outlined in the bill. Basically, after administrative costs, the money would be split between museums and the artist. Congressman Nadler will address the status of the bill and his thoughts and motivations.

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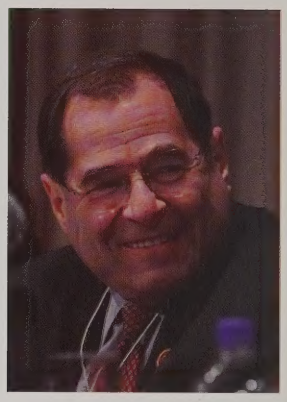
THE ARTISTS RESALE RIGHTS BILL

JERROLD L. NADLER*



The motivations for the bill are obvious. Most creators, such as authors and playwrights, see the real monetary benefit of their intellectual property through the power of copyright protections to control the reproduction and public performance of their works. Visual artists, however, are primarily compensated based on the first sale of their work. Therefore, they lose out on any future increase in value of their creation—an increase that could be significant, with the benefit going to those who buy and sell their art. Other jurisdictions, such as the European Union, have recognized this inequity and provide visual artists with a royalty on all future sales of their works.

"Why shouldn't the artists and creators benefit from the sale of their works? Can we design a system to fairly compensate them for the growing value of their works? I think we can and should."

I introduced H.R. 3688, the Equity for Visual Artists Act (EVAA), in the last Congress, the 112th Congress, to implement a resale royalty right in the U.S. because I thought it was fair. Senator Herb Kohl of Wisconsin introduced the Senate version of the bill. In our bill, the royalty would be paid on certain public sales of auction houses. Since we introduced the bill, there has been a lot of support for the idea from visual artists and from those who represent them. There has also been a lot of criticism, primarily from two large auction houses, namely Sotheby's and Christie's. What a surprise!

We asked the U.S. Copyright Office to study the issue and to report back with recommendations, and, indeed, the Copyright Office has been helpful in bringing stakeholders together and airing concerns. We have not seen their report, which, reportedly, will come out shortly, but we are proceeding without it because the 113th Congress will be half over in two weeks. We appreciate both criticism and praise, and we are now prepared to respond with a new draft of the legislation. The draft was completed earlier today. Senator Kohl retired and can no longer be a Senate sponsor. I am pleased to announce that we have two new Senate sponsors on board ready to introduce the bill in the Senate this session, Senator Tammy Baldwin of Wisconsin and Senator Ed Markey of Massachusetts, who succeeded Senator Kerry when he was appointed Secretary of State. They will, hopefully, bring a new energy to the bill, and make for great champions in the Senate. They are also both very good legislators.

So what does the new bill look like? Some people have said that setting the royalty rate at 7% was too high; Europe has a lower percentage. Could we perhaps lower the royalty rate? We have listened, and our new bill will reduce the royalty rate below 7%. The exact amount is not determined yet; I suspect it will be in the range of 5%, but we'll see. Some have criticized the provision of the bill that

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takes 3.5% of the 7% fee and dedicates it to a fund for museums to purchase the work of living artists. We heard from some museums who said they didn't want that money. We listened, and our new bill will completely eliminate the section dealing with museums, which means that that 3.5% will go to the artist not to the museums. Others have criticized the bill for only applying to sales above $10,000; they felt it didn't reach enough artists and would only benefit the very wealthy artists and their families. We felt there was some justification to that, so we lowered the limit on sales in the draft bill to $5,000, cutting it in half.

Despite hearing the concerns of some, we have decided to keep several other provisions and limitations in place. Some had thought we should extend the royalty collection process to galleries. For a number of reasons, we have decided, at least for the moment, not to do so. We believe public auctions offer the most transparency and make the most sense as a place to start when collecting visual artists' royalty fees. In terms of passing the bill, it also eliminates an entirely new source of opposition from the galleries. We will consider lowering the threshold of business that a public auction house must do, currently set at $25 million, to include more public auction houses. We have not yet set a threshold level, but discussions are getting close. In conclusion, we are making progress toward the final touches in our new bill. We have a draft as of today, but I can't go into the details. The draft still has to be discussed with the Senate sponsors. It will be public probably in January. We're moving forward with new energy in the House and Senate.

The purpose and motivation of this effort is the issue of equity for visual artists. Why shouldn't the artists and creators benefit from the sale of their works? Can we design a system to fairly compensate them for the growing value of their works? I think we can and should. Because of reciprocity, if we did this, the U.S. artists would benefit from Europe's artists compensation system, and we can help harmonize our two systems to the extent possible. Rather than a race to the bottom where visual artists lose, we should be working to lift up all artists by including a royalty rate here as well as in Europe. We must be careful that our rate does not undercut sales here in the United States, so our rate will not be higher than it is in Europe.

"I look forward to the discussion on it. I look forward to a battle over this, but I think we have a pretty good chance of getting it. It may take us a while, but we will get it."

There is one more benefit to increasing artists compensation through a royalty system. We may be able to encourage living artists and help them build up their collecting societies. In doing so, these societies will be able to help the individual artists band together to support their common interests. Artists, like professional athletes, musicians, or actors, do better in securing their rights and proper payments when they band together in collective groups. Imagine where songwriters and, for that matter, singers, would be if they didn't have collection societies to deal with radio, TV, and so forth. So, for all these reasons—equity, reciprocity, an increase in the fair and just compensation for artists—I am proud to spearhead this effort to bring equity to visual artists. I'm glad that we're going to be sponsored by Senators Baldwin and Markey, and I'm sure by other members of the House. I look forward to the discussion on it. I look forward to a battle over this, but I think we have a pretty good chance of getting it. It may take us a while, but we will get it, I think.

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THE COPYRIGHT OFFICE REVIEW

KARYN TEMPLE CLAGGETT*

As Associate Register of Copyrights for the U.S. Copyright Office, I will discuss the process that the Office has undertaken to conduct its review, some of the challenges we faced, and preview some things that struck us during the review process that will likely affect our recommendation. We are still finalizing the report, due to the government shutdown. I expect to release it before the Congress goes out of session for the December recess, so by December 12, if not before. [**Editor's Note:** The report was released on December 12.]

The Copyright Office issued an initial report on royalties for visual artists way back in 1992. In 2012, Representative Nadler asked us to do an updated review and analysis after he had introduced the EVAA. When we agreed to do the review, we didn't realize how complicated and nuanced the issues surrounding a resale royalty really are. Unfortunately, the people who worked on the 1992 report are no longer at the Copyright Office, so we couldn't benefit from institutional memory. But we quickly realized that the issues surrounding a resale royalty really are not just about dollars and cents, but also about morality, fairness, and, at some level, emotion. It was not an easy review, and we now know why our 1992 report was over 760 pages. Expect our current report to be shorter, but it does reflect the nuanced issues that confront us as we review. So, thank you, Representative Nadler, for the Herculean task that you gave to us.

"The Copyright Office issued an initial report on royalties for visual artists way back in 1992. In 2012, Representative Nadler asked us to do an updated review and analysis after he had introduced the EVAA. When we agreed to do the review, we didn't realize how complicated and nuanced the issues surrounding a resale royalty really are."

During our review we tried to survey current thinking on and approaches to resale royalty, both here in the United States as well as abroad. In terms of the U.S., we wanted to update what has happened in terms of the art market regarding the way artists exploit their rights under the current legal system. We issued a Federal Register Notice, requested written public comments, and organized public roundtables to hear from interested parties. We also generally asked people to let us know if they had information that they thought would be relevant for our review. We received approximately 58 written comments, and reviewed the conflicting information on both sides of the issue. We also wanted to see how the resale royalty has been approached in countries outside of the United States in the 15 or 20 years since our last report. We were able to benefit in this regard from

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a number of government or government-sponsored studies, some that have taken place after those countries adopted a resale royalty right.

Several things particularly struck us. One, it does appear that resale royalties, or *droit de suite,* is a worldwide trend at this point. At the time of our report in 1992, we had identified only about 36 countries that had resale royalties rights. Now, after EU harmonization, and our continued review, we've counted approximately 70. In addition to the European Union, there are roughly 13 countries in Latin America, 16 countries in Africa, as well as Australia, the Philippines, and the Russian Federation. Secondly, we noted that most of these countries have cited the lack of a viable licensing market to visual artists as the basis for adopting the right, and really wanted to address the ability for artists to be on par with other authors. From the Copyright Office's perspective, we, too, were very troubled by the perceived inequity, and wanted to determine as we conducted our review in practical terms what this means for artists working under the current legal system. In its simplest form, the question for us was: do artists really need more help?

"Will a resale royalty right actually serve to put artists on par with authors in terms of being able to make a living? And, what are the costs in terms of administration and enforcement?"

Third, we reviewed several government studies, and one of the things that struck us was that for those governments who have adopted resale royalties, the initial studies, at least for the most part, did not seem to find significant harm to the existing markets. We reviewed both an the EU study and a United Kingdom study and noted that in the EU study that was done after the EU Directive on royalty rights was implemented, the market share of the works of living artists actually rose in the European Union in between 2002 and 2010. That study also noted that countries such as Austria, the Netherlands, and Italy saw their market shares increase after the royalty was adopted. The study concluded that there was no discernable pattern to suggest that Member States which did not levy the royalty on the works of deceased artists have performed better than those that do. Finally, there was insufficient evidence to indicate that the loss of EU market share for works was directly attributable to the harmonization of the resale royalty right in 2006. So that was a very important study that we looked at closely.

"In its simplest form, the question for us was: do artists really need more help?"

We also reviewed the United Kingdom's study of the impact of the resale royalty right on their market. That study, which was commissioned by UKIPO, had noted that there was no evidence that the resale royalty had reduced art prices or diverted businesses away from the UK art market; the art market in the UK, either despite of or because of the introduction of the artist resale royalty, appeared to be doing well. Moreover, the UK market has grown as fast as, if not faster than, other markets where no resale royalty is available. Those were some key findings that influenced our review of this issue.

We also noted that, currently, there are ongoing studies to assess how, in the long term, the resale royalty is affecting the art market. Australia expects to issue results of its study shortly. The EU, under the Directive, has to issue a study every four years, and so they are expected to issue a report in 2014. The studies that we did review were very important for some of the conclusions they made, or did not make, with respect to the effect on the art market. The auction houses have strenuously argued that the resale royalty would significantly harm the art market in a number of ways. But, at least based on the data that we were able to review so far, we weren't able to see that in the significant ways that some have feared.

Before you conclude that you know what our recommendation is going to be, we did find it difficult

to fully assess how artists are disadvantaged under the current legal system. We recognized that not only artists but also other authors are struggling in the current legal environment in terms of being able to make a living with their art or creative rights. We struggled with whether a resale royalty is the best way to solve this issue. Will a resale royalty right actually serve to put artists on par with other authors in terms of being able to make a living? And, what are the costs in terms of administration and enforcement? In that regard, we noted in the 2008 UK analysis a quote from a scholar, John Merryman [Professor Emeritus, Stanford Law School], who wrote about the resale right in 1992:[1]

> "The only plausible explanation as to why well-meaning people who care about art and artists are enthusiastically for the resale royalty is that such people are misguided. Their critical/analytical vision is clouded by unfamiliarity with the art world, and by a folklore that sentimentally misportrays the artist's life and invidiously caricatures collectors and dealers; does not even mention museums; ignores the art market realities; disregards art world interdependencies; and is blind to the failure of *droit de suite* legislation in 24 of the 29 jurisdictions that have enacted it."

So, scary stuff in terms of the opposing view of whether a resale royalty right is actually appropriate and is something that will benefit artists.

Our review was also affected by an information problem that scholars have recognized in terms of assessing the impact of a resale royalty right; namely, that there is a significant amount of secrecy in the art market and a lack of regulation in the art market, so it is difficult to obtain specific data as to how the resale royalty right affects the art market. Who is actually benefiting from the resale royalty right? Almost everyone uses one source, which is cited for completely opposite reasons, but they all go back to one individual, so that has been a challenge for us in terms of assessing the review. One person in our resale royalty analysis referred to the statistics on the resale royalty right as a Rorschach test, in which everybody sees what they want to see.

In short, it has not been an easy analysis for us. I don't know that our review will make anyone happy, but that's probably the role of government; so we know that we're actually doing the right thing if we don't make anyone happy. We are really trying to thoroughly assess all of the issues, looking at the reviews, looking at the statistics and data, trying also to assess the amorphous morality and fairness issues that Representative Nadler mentioned and truly feels as well. But it is a difficult issue. We expect to issue our review no later than December 12, laying out how other countries are approaching this issue; discussing the trends that we've seen; and then providing a general recommendation that we hope will help Representative Nadler and the other sponsors as they continue to review this issue.

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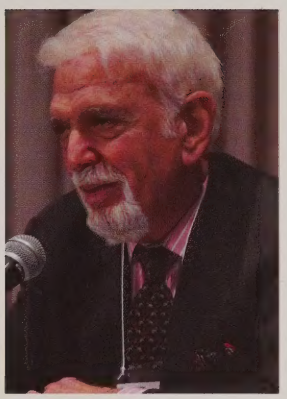
[1] John H. Merryman, "The Wrath of Robert Rauschenberg," originally published in 40 *Journal of the Copyright Society of the USA* 241 (1992) and republished in 41 *American Journal of Comparative Law* 103 (1993); 124 *Archiv für Urheber-Film-Funk- und Theaterrecht* 199 (1994); and *Thinking about the Elgin Marbles: critical essays on cultural property, art, and law* (Kluwer Law International, 2000), p. 369.

THE ARGUMENT PRO

THEODORE H. FEDER*



Before proceeding, I would like to address John Merryman's comment, cited by Karyn Claggett, to the effect that any advocate of the resale royalty bill doesn't know anything about the art market, a statement he made in 1992, well before the rule was adopted by the EU in harmonized form. I have crossed swords with Professor Merryman in the past, and he is, regrettably, an implacable foe of the *droit de suite*, the resale royalty.

Visual artists are the one major segment of the creative community in the U.S. who do not receive residual payments for subsequent sales of their works. Composers and lyricists will collect some $2 billion this year in royalties for their compositions distributed by their rights societies, chiefly, ASCAP and BMI. Playwrights and screenwriters get public performance royalties akin to residuals for later productions of their works. Television and film actors are entitled to residuals. All of these revenues are garnered by creators after their initial creative output. Unfortunately, visual artists receive none of these; they do not earn a penny in residual and resale payments. The benefits derived from the resale of their works accrue entirely to collectors, auction houses, and galleries.

One question often posed is whether only wealthy artists benefit from a resale royalty. The answer is a resounding "no." The data gathered in the UK, Germany and France, where the resale royalty is in effect, shows that it is of wide benefit to many little known working artists in those countries. The specific number of individual beneficiaries in the UK for 2012 is 1,302; for Germany, 1,235; and for France, 2,201.

"Visual artists are the one major segment of the creative community in the U.S. who do not receive residual payments for subsequent sales of their works."

History abounds with examples of impoverished artists whose works achieved acclaim only late in life or after their death. However, the fact that the resale royalty might also benefit successful artists is assuredly no argument for withholding its benefits from all. The need for the royalty does not exclude artists who have experienced a degree of success, often late in life, but whose status remains somewhat precarious. A case in point is the artist Rosalind Drexler, who writes:

> "I have nothing to leave my son but my work when I die. Much of it has been sold at bargain rates, most of it, my best work. Thinking about it, oddly enough, I feel left out of my own story … why should only the present owner turn a profit, while the artist is left with nothing? … I've worked to do my art; I won't last forever. I am 87 years old, but the paintings will go on a lot longer

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> than I will. It is very important for me to be able to know that I have taken care of my son who suffers from disability. This resale royalty thing is not only about money; it is about love and being able to give. It is about legacy. In the end, it is about the best kind of generosity."

As has been pointed out, resale royalties go back to France in 1920; followed by Belgium in 1921; and later, by Germany and Italy. The European Union adopted a harmonized rule in 2001, with the UK accepting the mandate in 2006. Beneficiaries of the resale royalty in countries that have them must be natives of countries that accord the resale royalty on a reciprocal basis to other countries. The United States does not accord the resale royalty to foreigners; it doesn't even accord it to its own citizens. Thus, significant sales of U.S. works abroad produce no revenue whatsoever for their American creators. A bill calling for the adoption of the resale royalty was presented in the early 1990s by Senator Edward Kennedy and Congressman Robert Kastenmeier. Formal hearings were held by the Copyright Office in 1991 and '92, and while its report refrained from recommending the adoption of the resale royalty, it went on to state:

> "The international community is now focusing on improving artists' rights, including the possibility of harmonization of *droit de suite* within the European Community. Should the European Community harmonize existing *droit de suite* laws, Congress may want to take another look at the resale royalty, particularly if the Community decides to extend the royalty to all Member States."

It has been 12 years since the European Community adopted a harmonized resale royalty, or *droit de suite*, as it's called in Europe, for all Member States, and consideration of an American right is long overdue.

The California Resale Royalty Act, which has been mentioned, has been invalidated by the Federal District Court of California because it purports, in the opinion of the judge, "to regulate transactions that take place wholly outside of California."[1] We believe the court erred in this finding. But, it does serve to point out the need for a federal law that would obtain in all the states, which the bill that will go before Congress is designed to achieve. On June 6, 2012, Judge Michael Fitzgerald, in reviewing a petition of the Plaintiffs, held that the court's "order is not a binding precedent on other district courts" in California.[2] At any rate, the matter is under appeal. Artists Rights Society, my organization, has submitted an amicus brief on behalf of the Plaintiffs. The issue, however, could be resolved or obviated if there were a federal resale law throughout the country.

> "Would the U.S. auction market suffer from instituting a resale royalty? We can see what happened to the auction market in the UK when the royalty was adopted there."

Would the U.S. auction market suffer from instituting a resale royalty? We can see what happened to the auction market in the UK when the royalty was adopted there. Our opponents maintain that the institution of an artists' resale royalty in the U.S. would impair or diminish auction sales in this country, but this was precisely the argument made by the opposition in England prior to the UK's adoption; namely, that it would wreck the sales market in Britain. This is completely belied, however, by the subsequent experience of the auction houses in the UK. Their concern was that the market would flee to the U.S., or elsewhere, where there was no royalty. But, far from declining, art market sales in the U.K. have increased appreciably since adoption. An article in the *Huffington Post* on September 14, 2012 bore the title "UK's Artist Resale Royalty Law Didn't Damage the Art Market (Despite All the Claims)." The article begins, "Wasn't the sky supposed to fall? … [The Law] was supposed to have a 'corrosive effect' on the British art market!" To the contrary, sales have increased to record levels in the U.K. and exceed those that occurred prior to adoption.

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1 *Estate of Graham v Sotheby's Inc.* 860 F.Supp. 2d 117 (C.D.Cal., May 17, 2012).

2 CV-11-8604-MWF (C.D.Cal., June 6, 2012).

Pilar Ordavas, a longtime head of Christie's Contemporary Art Department, and former Deputy Chairman of Christie's London, remarked after the institution of the rule in England, that "the year brought the best sales ever in contemporary art in our history, and as far as paying resale royalties, nobody seems to be concerned."[3]

Anthony Brown, Chairman of the British Art Market Federation, who was against the adoption of the rule, admits that the resale royalty law has no visible effect on the British art market. He says, "There has been a substantial boom on the contemporary side, and this law isn't going to knock it off its perch." Glenn Scott Wright, Director of London's Miro art gallery, stated more recently, "Sales have been as healthy as before the law came into effect. Clients haven't indicated that they were unwilling to buy because of the royalty. In fact there hasn't been much discussion of the law.[4]

Indeed, so little does the resale royalty affect the nature of the market that a number of New York-based galleries have opened up ambitious operations in London. These include those of David Zwirner, Gagosian, Pace, and Michael Werner. It's important to note that, in London, galleries must pay the resale royalty, while in the United States there is no resale royalty for galleries. If paying such a resale royalty is a drain on art sales, why would the American galleries open branches in England? It would make no sense, and they would have no incentive for doing so.

Judd Tully, writing in *Art + Auction* magazine, commented about that phenomenon: "Essentially what the richer New York galleries are doing is establishing new beachheads in London to find new collectors. ... In sum, the Americans are coming." Needless to say, they would not venture there if the market did not justify it.

Lastly, a submission made to the Copyright Office by the attorneys for Christie's and Sotheby's states that the global art market in 2011, the year for which they possessed data, totaled 46.1 billion euros or, in U.S. dollars, roughly $59 billion, of which 29% or $17.1 billion occurred from U.S. sales. Neither foreign nor domestic artists received a penny from these U.S. proceeds. Worse, because of the lack of reciprocity, American artists received nothing from the foreign sales of their works. Auction sales this year are likely to be even higher than in the recent past. On the evening of November 13 [2013] alone, Christie's New York sales brought in $691.5 million. Those of Sotheby's the next night fetched a somewhat less staggering $380 million, still its biggest one night ever.

> "Their concern was that the market would flee to the U.S., or elsewhere, where there was no royalty. But, far from declining, art market sales in the U.K. have increased appreciably since adoption."

According to published reports, auction houses typically charge a 25% buyer's commission on the first $75,000 (Christie's) or on the first $100,000 (Sotheby's) of a purchase; a 20% commission on the next $1.5 million in the case of Christie's, and $1.9 million on the part of Sotheby's. The commission thereafter is 12%. The auction houses also customarily charge sellers commissions, which can range anywhere from one to ten percent. The artist, of course, receives none of these fees.

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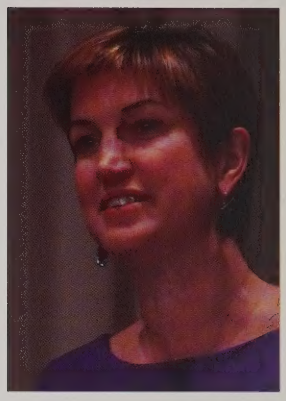
3 Daniel Grant, "A New Kind of Art Royalty," *ArtNet Magazine*, December 2, 2007.

4 "Inside the Equity for Visual Artists Act," *New York Observer*, January 31, 2014.

THE ARGUMENT CON

SANDRA L. COBDEN



While many people know Christie's, which is one of the premiere auction houses in the world, I will nonetheless begin by elaborating on some of what we do. We were founded in 1766 by James Christie. Today we have 450 sales annually in 80 categories that include fine art, collectibles, wine, and jewelry, among other things. We have 53 offices in 32 countries, and 12 salesrooms around the world, with our primary salesrooms in London, New York, and Hong Kong. In addition, we have sales sites in Paris, Geneva, Milan, Amsterdam, Dubai, Zurich, and, most recently, in Shanghai and Mumbai.

"It is uncomfortable for us to find ourselves on the opposite side of an issue with some, but not all, artists. We do so reluctantly, and only after careful consideration of the issues. But we *are* opposed. ..."

As part of being a global player in the art market, Christie's has been engaged in the resale royalty issue for quite some time in three different jurisdictions. In the European Union, we opposed the EU Directive that provided for a resale royalty schedule there. It passed anyway, and we have been monitoring its impact on the market since. In the U.S., we have been involved in two different ways. We have been involved in the litigation in California over the California Resale Royalty Act that was enacted in 1976. The statute was previously described. I will simply add that three entities were sued—Christie's, Sotheby's and eBay. All three of us jointly moved to dismiss the complaints on the grounds that the statute was unconstitutional. The District Court agreed and dismissed it on the grounds that it violated the Dormant Commerce Clause. The case is currently on appeal before the Ninth Circuit. We are waiting for the final reply brief of the Plaintiffs, and we expect oral arguments sometime early in 2014, with the decision to follow thereafter.

In addition to this litigation, we have also been involved in opposing incumbent Congressman Nadler's first bill (H.R. 3688), which expired in the last Congressional term without any action. Finally, we have been involved in the discussions in China as to whether or not a resale royalty bill should be enacted there, and we agree that it sounds like that has been postponed for at least the near term.

Christie's considers itself an advocate for artists. We know that artists heavily rely on the prices gained at auctions to demonstrate the market price for their works, and to show the increase in value of their works over time. Because of our role in supporting a robust art market, and in turn, necessarily, supporting artists, it is uncomfortable for us to find ourselves on the opposite side of an issue with some, but not all, artists. We do so reluctantly, and only after careful consideration of the issues. But we *are*

* Sandra L. Cobden, Esq., is General Counsel, Dispute Resolution and Legal Public Affairs, Christie's.

opposed, and we have many reasons to justify our opposition. I will discuss only a few of them, primarily three.

First, we think the resale royalty does hurt the art market. Statistics have already been cited; I'm going to throw out a few more. Art Economics, an independent research company, has been researching this issue for a number of years. Dr. Clare McAndrew, their primary economist, has looked at the recovery from the recent recession that affected not only the financial markets, but the art markets as well.[1] The markets rebounded from that recession primarily in 2009 through 2010. What did McAndrew's statistical analysis show? That the U.S. art market rebounded by 120%. During that same time period, the China market rebounded by 121%. The EU market rebounded by 39%. That's a pretty dramatic difference. In another analysis, she looked at the Post-War and Modern Art sectors, which account for 74% of the fine art market by value, between 2006 and 2012. During that time period, both the U.S. and the EU lost market share to China, which was developing its art market. When Clare McAndrew took China out of the equation, however, and did a direct comparison between the United States and the EU, she showed that the U.S. market share grew by 3% and the EU market share declined by 3%.

I agree with others on this panel that say the statistics don't necessarily prove that the resale royalty was the cause for the EU stagnation. Market shifts likely have multiple causes. But we suspect that one important cause is the resale royalty Directive that exists in the EU, but not in the U.S., and not in China. We also suspect that the EU collecting agencies secretly agree. Why? Because when they're arguing in China, and when they're arguing before the U.S. Copyright Office, one of the things they're saying is that we need a globalization of the resale royalty scheme. Why? To level the playing field.

The second reason why Christie's is opposed to a resale royalty is that it changes copyright law in a manner that dilutes important protections for private property. One of the arguments you hear in support of a resale royalty is that it is only fair that artists have the same rights as musicians and authors. The problem with that argument is that they *do* have the same rights as musicians and authors. They have the right to collect royalties for the reproduction of their works. What artists want, and what they're asking for here, is something that musicians and authors don't have, and that is a resale royalty on their original work of art.

So what's wrong with that? It's a good question. I have two answers. First, it seriously encroaches on a private property holder's right to freely buy and sell his or her property. Indeed, the Copyright Office wrote in its 1992 report to this issue: "The notion of an encumbrance attaching to an object that has been freely purchased is antithetical to our tradition of free alienability of property." That's the first reason. The second reason is that, once you grant artists that right, how do you distinguish between artists and the many other creators who create some other version of what I will call art? For instance, should architects get a resale royalty for every subsequent sale of the houses that they designed? When I sold my house that wasn't quite what I was expecting, or got. What about jewelry makers who make original types of jewelry? Should they get a resale royalty? Or custom furniture makers? Or fashion designers who create couture wear? All of a sudden, you're left with a significant number of people, all of whom will claim that their creations merit the same type of rights that the artists are claiming here. That is generally not how our U.S. property law system has worked, particularly because we would have no way of easily distinguishing between the artist, the architect, the jeweler, the custom furniture maker, and frankly, if I thought about it a bit more, I could probably come up with another 15 categories.

The third reason why we oppose the resale royalty is that we don't think it achieves its goal of helping a significant number of artists. If a policy initiative imposes significant risks to the property rights, you want that initiative at least to be a home-run for

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1 Dr. Clare McAndrew, "The Global Art Market in 2010: Crisis and Recovery." www.TEFAF.COM/DesktopDefault.aspx?tabId=78.

the goal you're trying to achieve. But, again, that's not what the statistics show here. Art Economics also looked at how many artists in the EU in 2010 had sales eligible for resale royalty, the answer: 3%. That means that 97% of the artists could not benefit from this Directive. Another study, this one by Toby Froschauer in 2008,[2] shed some light on just who that 3% are. In a study, again limited to the UK, he showed that the top 10% of the artists collected 80% of the resale royalties that were collected between 2006 and 2007. In other words, the most successful artists, rather than the struggling artists, are the ones who are collecting most of the resale royalties.

So it is our view that a resale royalty scheme is a broken model. But let me make an analogy. We're having a wine reception after this panel discussion and the Q&A. What would happen if Ted Feder, Karyn Claggett, and Congressman Nadler were the only ones allowed to have the wine and food, and the rest of us couldn't have any? That's what this scheme is like, and I don't think any of us would think that's particularly fair. Or, frankly, effective in feeding the rest of us.

So, for all of these reasons and more, we have serious concerns about the resale royalty scheme. We also have a few concerns about Congressman Nadler's original bill. We are quite interested to see the new one, to see if these issues are still in it, and I understand some of them are.

In his original bill (H.R. 3688), the resale royalty was imposed only on brick and mortar auction houses of a certain size. That definitely covered two of us, Christie's and Sotheby's, and possibly one or two more. We are important players in the art market, but we are far from the only players in the art market, so it didn't seem fair to us that galleries, dealers, and e-commerce entities were not covered by the bill. We understood the strategic reasons for doing that, but it didn't seem fair. We also think it's unconstitutional.

There was also an omission in the bill, namely, that if the art was sold at a loss, that is, for less than its purchase price, the seller would still be responsible for paying a resale royalty. Again, it just doesn't seem fair that an artist would get a royalty even when there was no profit in the sale to the collector.

Finally, the collection agencies, which often take significant percentages of the resale royalty amount collected, are completely unregulated in this bill. So those were some of the concerns we had with the original bill, and we will wait to see if any of those have been fixed in the new bill. [Editor's Note: See insert, p. 61, for highlights of the revised bill.]

Christie's wants a robust market that supports the sale of art by all artists both in the primary and resale markets. I've discussed our concerns about the resale royalty scheme, but if we're going to talk about our concerns, we should also try to talk about alternatives. While we don't have all the answers, we do have two suggestions, and we're more than willing to continue the dialogue. First, we think there should be a focus on supporting artists in the primary market rather than the resale market because that's where 100% of the artists are, not just 3%. Another suggestion, which was also mentioned in the original 1992 Copyright Office report on this issue, is to amend the tax law to allow artists to get tax donations for donating their art to museums or other public institutions. Those are two areas that we think should be explored further; they're areas where we're willing to engage in a dialogue with other stakeholders in the art market. We think, at the end of the day, they provide more support for artists than the current resale royalty scheme being proposed.

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2 Toby Froschauer, "The Impact of Artist Resale Rights on the Art Market in the United Kingdom." www.AntiquesTradeGazette.COM/news/6591.aspx.

ARTIST RESALE RIGHTS IN THE U.S.: OVERDUE OR SHOULDN'T DO?

Q & A

Q SHARON FLESCHER (SF): I believe we actually made news at this program, which I feared we might not be able to do. Before we turn to the speakers and then the audience for discussion, I want to clarify something that Congressman Nadler said. Did you say, Congressman Nadler, that your new bill, like the previous one, would affect only the auction houses and not the galleries?

A CONGRESSMAN JERROLD NADLER (JN): Yes, but many more of the auction houses.

SF: Because the threshold level is lower. And since this is just a draft, is it your intention to wait until the Copyright Office comes out with its report to make it a finished piece?

A JN: If the Copyright Office comes out with its report December 12, I suspect so.

SF: Those two questions were intended to clarify what was said; I have others. But Ted Feder is clearly chomping at the bit to respond to something that Sandy Cobden said.

Q THEODORE H. FEDER (TF): Sandy objected to the fact that galleries are not included, which she feels is unfair. So I have a question for Sandy. If galleries were included, would Christie's be in favor of the bill?

A SANDRA L. COBDEN (SC): The obvious answer to that is "no" because we have many objections to the bill, some of what I just listed. But one objection that we definitely had to Congressman Nadler's original bill is that it focused solely on the auction houses to bear the administrative cost of implementing a resale royalty scheme. It seems particularly unfair to exclude galleries, dealers, and e-commerce entities, especially since at our auction house we do live auctions, private sales, and e-commerce sales.

TF: But if it were made fair, you still wouldn't accept the rule. I just wanted to make that point.

SC: Well, it doesn't address all the other issues I've raised.

PHILIPPA S. LOENGARD (PL): Ted, you make it sound easy, in saying "if we extended it to galleries," but I don't think that that's a really genuine comment on your part.

TF: I'm only responding to what was raised.

Q KARYN TEMPLE CLAGGETT (KC): I have a question and response based on what both Ted and Sandy said. One of the things the Copyright Office noted is that the EU Directive is extended to galleries. I think what Pippa probably was going to say is that the royalty is very difficult to administer if it is extended to galleries. In terms of the experience in the EU, do you have any comments regarding how difficult administration of the EU requirement for galleries and all art market professionals has been? That is something we looked at, and we see both sides. On the one hand, it might be perceived as more fair or as addressing more artists if it were expanded beyond auction houses, but on the other hand, people have said that it's very difficult to enforce. So experience in terms of the EU model, which does extend beyond auction houses, would be helpful for us.

A SC: I have two responses to that. One, I don't know of any statistical studies that would help illuminate the difficulties of imposing a resale royalty

scheme on galleries and dealers, which are almost always less transparent than auction houses. I will say, however, that in the U.S., the IRS doesn't say, "Hmm, we're not going to tax those small businesses or those people over there because we're not sure we'll be able to figure out if they're actually complying." That's not the way it works. When you're imposing what is effectively a tax, you generally impose it on everyone so that everyone bears the burden fairly. I also understand the other reason for limiting the royalty to just auction houses. Strategically, if you want to get this bill passed, you want to eliminate as many opponents as possible. So if you don't expand it to the galleries, to the dealers, to eBay, which has a fairly formidable lobbying organization, you're more likely to get it enacted than if you impose it on everybody in the art market. But basic fairness dictates that it would be imposed on everybody.

Q **PL:** My question for Ted and for Congressman Nadler is, if the goal is to benefit artists—and I do understand the theory that any benefit is better than none—but if that's the goal, by imposing the royalty on a section of the market and not the entire market, don't you run the risk of driving sales from the auctions, especially from places like museums and other charities that use the auctions for the Blue Sky reasons, for the transparency that is needed when dealing with a public trust, and don't you then run the risk of driving everyone else, or a majority of people, to the private market, where this isn't an issue and this doesn't come up, leaving lower prices in a depressed auction market and hurting the very organizations that you don't want to hurt, and which the first bill aimed to help? And secondly, if you don't do that, and the concern is the logistics, is that a fair way to legislate? Is it fair to say we can't extend it to those people who don't have a register of all sales in America and so we're going to go with what we can?

A **TF:** It's true that one factor that accounts for focusing on the auction houses is because their sales are more transparent. I'm not sure whether you include galleries or not. Either scenario would be unsatisfactory to you. I noticed that the statistics Sandy cited were done by Clare McAndrew. If I'm not mistaken, they were gathered for the auction houses. I think she appeared on behalf of the auction houses at the roundtable in Washington. So, I'm not entirely ready to accept those statistics. But they do show a growth in the major markets. I can only repeat what the Deputy Chairman at Christie's said in London, that the resale royalty had no effect whatsoever on the market. And the head of the British Art Market Federation said the same thing. So that belies the notion that somehow the market is going to suffer or be diminished. It's not a factor.

JN: First, let me comment briefly on the question of the galleries. Two things are always relevant in the legislation. One, the ease of administration. Two, the effect on the ability to pass the bill. I make no apology for either one of them. If you can help a lot of artists but not all of them, versus zero, I'll take the first situation.

Secondly, let me comment on the statistics and then on the philosophy. I don't trust these statistics at all either because I've seen statistics in Congress totally misused in reports commissioned by partisans, by people who are for and against specific legislation. Generally, the more impressive reports come from the people with the biggest pocketbooks to finance the reports. For example, and I haven't really looked at these reports, the resale royalty hurts the art market, and some of the evidence for that comes from looking at the recovery from the recent recession. In the U.S. and China, the art market rebounded 120%. The EU art market rebounded 39%. Very interesting, and probably explained by the fact that the U.S. and China recovered from the recession to a much greater extent than the EU because, as opposed to the at first semi-intelligent, and then not very intelligent economic policies in the U.S. and China, the European Union has had disastrous economic policies. In fact, you can track the economic growth rates of the U.S. versus Europe in 2009—I don't know about China—and they track exactly a mild recovery from the recession of 2001, a sharp collapse in 2007 to 2009, and, starting in 2009, a mild recovery for both the U.S. and Europe from the recession until 2010 when the

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U.S. continues a mild recovery through 2013 and Europe plummets into another recession because they elected unfortunate governments that imposed austerity policies that destroyed their economies. So, to compare recovery in the art market without noting what was happening in the overall economies simultaneously is completely wrong.

Let me say two more things. We are told that the Most successful artists will collect most of the, let's call them residuals. That's probably true, as with performing artists. Obviously, Elvis Presley or the Beatles will get a lot more residuals than someone no one has ever heard of. But the fact that the most successful artists will collect a lot of the money doesn't mean that less successful artists won't collect significant and, perhaps to them, crucial sums. So it's not an argument against fairness.

Finally, the first comment was that this change in copyright law would dilute private property rights. It might or it might not, but on this I'll side with that radical Republican Teddy Roosevelt who said, "Every man holds his property subject to the general right of the community to regulate it to whatever degree the public welfare may require it." This may be a more radical view today, but throughout much of American history, it was a standard view articulated by Abraham Lincoln, Teddy Roosevelt, FDR, and certainly others. We have the right to regulate private property, to regulate the rights that property conveys in order to promote the public welfare. That's what legislative bodies are about; that's what politics is about, different conceptions of what's fair and what's the proper role of the state.

KC: I would add one thing. The 1992 Copyright Office report is cited often for that statement in terms of our concern, and I think that we would still share it generally in terms of having a resale royalty right that would in some sense conflict with the traditional notion of free alienability of property. However, at the same time, we recognized in the 1992 report, and we would need to recognize now, that Congress has the power to regulate property as it sees fit. It has qualified the first sale doctrine when it has found appropriate, for example, with respect to termination rights and others. If there's a policy reason for Congress to qualify the first sale doctrine, it has certainly done so in appropriate circumstances. I hope I'm similarly non-committal as before, but I again recognize both sides of the coin. In 1992 we did express some concern with this, but we also recognized that, as Congressman Nadler said, if there are policy reasons for Congress to act in a certain area specifically with respect for the first sale doctrine, Congress has felt empowered to do so and has the ability to do so.

"Obviously, Elvis Presley or the Beatles will get a lot more residuals than someone no one has ever heard of. But the fact that the most successful artists will collect a lot of the money doesn't mean that less successful artists won't collect significant and, perhaps to them, crucial sums. So it's not an argument against fairness."

—Jerrold Nadler

SC: As the minority on this panel in opposing resale royalties, there are many things I could respond to here. With respect to the allegation that the statistics I cited were somehow inaccurate, I will say two things. Many factors play into recovery from a recession, from market shifts, and the resale royalty isn't the only one. But at one time auctions were limited primarily to people within a specific region. At a European auction, the primary buyers were European. At an American auction, the primary buyers were American. The same with China. That's not true today. Our auctions have global participants, and often half, or more, of our participants are not from the region in which the auction is held. What does that show to me? That something else, not just what was going on in that region, was the cause for the very robust rebound in the U.S. and in China and the lukewarm 39% rebound in the EU.

SF: If I could inject something about the statistics: the situation in England is not that straightforward. Although the UK adopted *droit de suite* in 2006, it affected only living artists initially. It's only since 2012 that it applies to deceased artists. So some of the statistics gathered in the earlier round of studies and used for the Copyright Office hearings are not the final ones. Clare McAndrew or anyone else doing a further study at the end of this year will need to include the impact on deceased artists. Some of the highest prices that we've seen in the auction market recently would not have been affected under the previous regulation, but only as of 2012. That's an important distinction.

TF: I find it somewhat pejorative and objectionable to call the resale royalty commission for artists a tax. It isn't. I don't mind calling it a tax if Christie's is willing to call its 25% buyer's commission a tax and it's 5-10% and its seller's commission a tax. It's really the same kind of commission, but a much smaller one than that of an auction house.

Q What impact does the increase of the buyer's premium have on the market in comparison to resale royalties? At the beginning of 2013, Sotheby's and Christie's increased the threshold of their buyer's premium of 25% or 20% or 12%; that is, the point at which these percentages would be charged, so, effectively, most buyers are now paying 25% or 20%. Am I correct?

A **SC:** Are you correct about the scheme of our buyer's premium? I, frankly, don't have it memorized but I will acknowledge that we have a buyer's premium and that we recently increased it. Our buyer's premium covers many of our costs, our real costs in holding auctions, creating marketing material, shipping property here and there, and doing everything necessary to exhibit and sell our auctions. Over time, those costs increased, and, as a result, we increased our buyer's premium.

Q What impact did this have on the market?

A **SC:** I can't speak for Sotheby's, and we hope it has a minimal impact, but it was necessary to reflect our real costs.

JN: I don't think the question was asking about the justification for the increase. It may or may not have been justified. The question was it was increased; for good reasons or bad, it was increased. What effect did that have on the market, since the contention a few moments ago was that a resale provision of three, four, five percent would depress the market. If this commission was increased, did it depress the market? If it didn't, why would you say that it would?

SC: We increased our buyer's premium because of our own increased costs, which reflect effectively a cost of living increase. Will it affect the art market? I don't know. We just did it; no one has looked at its impact yet. We hope it doesn't, but we believed it necessary. This differs from the resale royalty schemes that apply not just to the auction houses' buyer's premium but to all sales of art in the EU. That appears much more like a blanket—I'm sorry, Ted, I'm going to call it a tax—than does an increase in our commission on putting together an auction.

Q Ms. Cobden, you described your company and Sotheby's as being global companies with offices all over the world doing business worldwide. Obviously, you're operating in some parts of the world with this system and in other parts of the world without. Why should it make any difference as long as the system is harmonized and every market is the same? Ideally, it seems like that would be the best solution. As far as increasing prices having a depressing effect on the market, recent auction sales prices have been rising. So, why wouldn't you embrace the harmonization that would have all of your auction houses, all of your markets under a similar rule?

A **SC:** Because, again, we don't think it leads to a robust art market, and we think a robust art market is part of what helps artists, auction houses, dealers, galleries … the entire market. Prices have been increasing substantially in the art market for certain artists, but not for all artists. There are many artists for whom breaking from the primary market into the resale market is very tough and very price sensitive. Those artists shouldn't be put at a disadvantage because we have created a less robust market. We

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also think that a robust art market and the ability of artists to see their prices increase over time in the auction sales leads them to gain more from their next property. So, to say an artist doesn't benefit without a resale royalty is to deny that when his or her artwork sells well at auction, the prices of all his or her new works increase to reflect that new price.

Q **SF:** If one rationale for artist resale royalties is to allow artists—and not just collectors—to benefit as the market value of their work appreciates, why will the royalty be based on the total amount of the sale and not just on the appreciated amount? For a work sold at a million dollars the prior time and now at two million, if there is a percentage, why shouldn't it be on the differential between the one million and two million, and not on the total two million, so that each time a Picasso is sold, or whoever the artist, and for astronomical prices, it's not on the total amount without a cap?

"We're saying the value created by the artist should be recognized at any time whenever there is a transfer. And the fact that it is now worth "x" dollars and at one point it was worth "y" dollars, it's not the question of the differential that's relevant, or the loss. It ought to be paid even if the seller is taking a loss. It has nothing to do with the gain or loss by the person who owned it from one day to the next."

—Jerrold Nadler

A **KC:** Part of it is administration. It's difficult to assess and calculate in terms of the exact sales price. So it's easier to base it on the gross sale price rather than the increased value. We recognized that issue in our 1992 report. If you don't base it on the increased value, you could be giving a windfall to certain artists because when it's a loss, they would still be getting a resale royalty. At that time we considered having a presumption. For example, it would be based on just the gross sale price unless there was direct evidence that it was a loss. That would address some of the difficulty in terms of administration. As a general matter, it would be based on the gross sale, But if there was documentation and the seller could show that it was sold at a loss, it would be based on the profit as opposed to the sale price.

Q **PL:** Why would it be an administrative issue? Presumably, the seller, for tax reasons, has to prove the purchase price to the IRS in order to pay capital gains tax.

A **KC:** Some countries have regulations that require that type of information. But, obviously, in the U.S. you would confront privacy concerns in terms of forcing sellers to identify the purchase price. Sales in the art market have routinely been very private in terms of who sold what, and for how much. So those are some of the issues that we identified in terms of doing it based on profit as opposed to gross sales.

JN: I don't know about the administration, and frankly it doesn't bother me one way or the other. It is not a capital gains tax and it's not intended to be. A capital gains tax recognizes gain by the individual. When you purchase something, you don't pay the capital gain. When you sell it, you pay the gain on the differential, how much it increased for you. The person who made the thing that you're … let's assume it's a house or a stock certificate. The builder of the house has nothing to do with the capital gains tax, the fact that it's increased in value. The company represented by the stock certificate, the company of which you're buying or selling ten thousand shares, has nothing to do with it. Here, we're saying the value created by the artist should be recognized at any time whenever there is a transfer. And the fact that it is now worth "x" dollars and at one point it was worth "y" dollars, it's not the question of the differential that's relevant, or the loss. It ought to be paid even if the

seller is taking a loss. It has nothing to do with the gain or loss by the person who owned it from one day to the next. When a songwriter or a performing artist gets a residual, the residual is not based on whether the radio broadcast is making money or not. In effect, it's based on the value of the song as measured by how many times it's played. Here the measurement of value is different, obviously, because it's not how many times it sold.

Q **SF:** But, if the argument is that the artist, not simply the collector, should be sharing in the appreciated value of his work, then it does follow that the artist should be paid only on the appreciation.

A **JN:** The argument is broader than that. The artist should be sharing in the value of his work, period, just as a songwriter shares in the value of his work whenever it's performed. And he should get that even if it depreciated. You can agree or disagree with the concept, but the concept is very different from a capital gain. In a capital gain, a tax is paid based on the change in value for the current owner. It has nothing to do with the value in general.

TF: One important reason for the application on the gross is that's how the international system works. In the EU, it's done on the gross. If you start mixing this up, you'll have a difficult time dealing with reciprocal ways of assessing the fees. In addition, many of these works that have come up for sale have been in the hands of families for generations. They don't know what the sale price was, or they might have received the works as gifts of Picasso or Matisse. You don't have that information for the most part, and very often those private sales are not very transparent to begin with. Yet another reason why the auctions are the entities we've tended to focus on because their sales are reported, or have to be reported under the EU and are also reported here for the most part, whereas private sales often escape such reporting.

SC: To respond to one of Ted's comments, if the concern is, "Gee, we're not doing it in the same way that the EU is doing it," it doesn't sound like Congressman Nadler's bill is going to do it the same way that EU does it, because the EU covers galleries, dealers, and other sellers, not just auction houses. So, if that is the goal, let's have that be the goal. But more to the point, the California Resale Royalty Act had an exception if there was a loss that was fairly easy to administer, and we administered routinely when a consignor presented proof that in fact they had purchased it for more than they sold it. And so that was a fairly easy way of remedying that inequity to the collector.

TF: I personally am happy to hear that because the auction houses in California, as has been noted, very often neglected to follow up on the payment of the resale royalty.

Q My question is for the Congressman. If I buy a work of visual art and I don't take very good care of it and I destroy its after market value, should I have to pay a tax to the government for that? And, assuming not, doesn't that indicate that there's something different about the after market and property rights for unique property in the after market as opposed to the primary market? In other words, the Congressman said that the goal of providing the resale royalty is that the artist should enjoy the value at all times. If I buy a work of art, the artist is successful, and her or his works are doing very well, but I buy it; I think it's mine; I don't take good care of it for whatever reason; and there is no resale market for that work anymore. I've deprived the artist of any right to resale profits.

A **JN:** You're correct, sort of. Number one, you are not the custodian of that artwork. You do not have a duty, except perhaps to art in general, but you certainly have no legal duty to maintain it properly, and you cannot be penalized for not doing so. Number two, government and legislation cannot solve every problem. You have articulated a situation which would be unfortunate to the world of art and unfortunate to the artist, who would not get, if you destroyed it, any percent on the resale value. If I could figure out a way to deal with that without making you a custodian, I might, although legislation does not cure that. But that's not an argument against legislation.

KARYN TEMPLE CLAGGETT = KC
SANDRA L. COBDEN = SC
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KC: There is some limited cure for that in terms of the Visual Artist Rights Act, which does permit certain limited distortions of art.

Q You're saying you don't have to take the cost into consideration. If I buy something at auction for a million dollars today, and tomorrow I sell it for a million dollars at auction, and then on the third day, the buyer sells it, that tax was imposed three times. That seems to be going far beyond trying to compensate the artist for what's happening. There's been no appreciation, and if you're just selling it on the gross sales price, you're distorting the concept.

A **JN:** No. You're distorting the concept if you regard it as a capital gains tax.

Q (cont.) You're distorting the concept if you're trying to benefit the artist on his sale which is in the market, and because the work has turned around three times at the same amount, to me, at least, that doesn't. But I have another question. Everybody is comparing artists to authors, writers. An author gets a copyright when his book is published and when it's sold. Once he sells that book, there is no further compensation for him. The compensation is not on transfers forevermore. The compensation is for the first use of a book, a record, a video, etc. Now we're going way out of the way to tax or not to tax, or whatever you want to call it, on transfers forevermore.

A **TF:** Most authors get royalties on their books. An advance against royalties is typically how these things are done.

KC: I would add to that. One of the things we struggle with is looking at the comparison between authors and artists, who is making more money, who is advantaged or disadvantaged by the current legal system? One thing that we acknowledged is that all rights are the same, as Sandy pointed out, all artists and authors under the Copyright Act receive the same standard Section 106 rights. As a practical matter, given how artists and authors exploit their rights differently, are they disadvantaged? So while everyone has the same, exclusive rights under Section 106, artists typically make the most money from the first sale. Authors have a lucrative, most likely, reproduction right and licensing right that many artists are not able to take advantage of. Even though, as a baseline and technical matter, artists and authors have the same right, as a practical matter, given the way they exploit their rights, is there a disadvantage?

PL: We also need to address who owns the copyright because I think Ted mentioned how theater or sitcom actors get residuals. They don't own the copyright in the work; the only exploitation that they get is in the form of residuals, which are on a declining scale. So the first rerun of *Cheers* gets you "x," the second gets you a quarter of "x," to the point where you get almost nothing, say, three cents. But most importantly, they don't have the option of exploiting the copyright in *Cheers*, as we've learned through court cases. Whereas an artist, unless he transfers the copyright, can exploit the art in forms other than the original canvas or other media than that in which the art was created. That's something to keep in mind. Also, I seem to recall that in the original bill, the resale royalty payment went to the copyright owner and not the artist.

TF: At times, the copyright owner is the estate. There are numerous situations where the artist is deceased. We pointed out that very often the artist realized return, or the family did, after the artist passed away. So the heirs of artists may benefit. In that case they're referred to as either the copyright owners or the successors to the artist.

PL: So it wouldn't be the copyright owner if the artist were alive. Say the artist has transferred their rights?

TF: No. It's inalienable. It would not go to somebody to whom the copyright was transferred, assuming that the artist would do that, and the overwhelming majority of artists would not do that. In Europe it's almost unheard of.

KC: And I would say worldwide, almost exclusively, the resale royalty is inalienable.

Q **SF:** Congressman, in your proposed new bill, is the royalty going to extend for the artist's lifetime and then plus 20 years after death?

A **JN:** Seventy.

Q **SF:** Lifetime plus 70? I don't mean copyright, I mean the resale royalty.

A **TF:** It's co-terminous with the copyright. It's lifetime plus 70.

Q I've really enjoyed the talk, and I think that each member has said something remarkably valuable. But we must remember Robert Rauschenberg, who, I believe, brought this idea to the fore quite a few years back. Here we have an artist, who, in his own lifetime, saw his works go from perhaps several hundreds to several thousands to several millions of dollars. So unlike a car that depreciates, artwork tends to skyrocket if an artist achieves a certain amount of success. We're looking at a market that is perhaps way out of control. Essentially, through this new bill, you're allowing the potential for the artist to get a little bit back for the overall lifetime value of the artwork and, perhaps intelligently, invest that money in a Rauschenberg Foundation, feeding a new breed of artists who may contribute in the future.

A **SF:** Your very comment shows that certainly Rauschenberg, who may have been the first one to draw public attention to the inequity of the artist versus the collector, at the time of the Scull sale,[1] ended up benefiting tremendously as his works appreciated in value. But not all other artists have.

"So, to say an artist doesn't benefit without a resale royalty is to deny that when his or her artwork sells well at auction, the prices of all his or her new works increase to reflect that new price."

—Sandra Cobden

Q I have a question about the ancillary impacts of the suggestions. I can see arguments in both directions. You're calling a robust market a positive market. I think I can identify with that. At the same time, I think there is a need for more regulation. The art market is, other than the drug market, the most unregulated multi-billion dollar industry in the world, and everyone, often other than the artist, "profits" from that. So despite it being perhaps impractical and difficult to implement this, in some way, it might, as a secondary effect, bring a need for regulation which would also help us tremendously with potential provenance issues because there would be a need to maintain records in a way that would discourage some transactions but might ultimately raise the profile of the artist in the chain of transactions. I'm not blind to the economic arguments. As we know, people will always get on a plane and travel 5,000 miles to avoid spending a dollar. But somehow we have to bring the artist back into the picture also economically.

A **KC:** That was something that struck us. Who knew that the art market could be compared to the drug market in terms of secrecy and lack of transparency? One question that we looked at in terms of our own analysis was outside of the resale royalty. Is there a need for greater regulation even outside of the resale royalty market given the lack of regulation in the art market?

SF: That's a whole other program, I can assure you.

JN: It's an interesting comparison of the art market to the drug market. They both are largely unregulated, and both perhaps need more regulation. I hope there's a difference. Enforcement in the drug market tends to have a certain finality that we're not familiar with in the art market, and we shouldn't go there.

SC: I will say, as the defender of the art market, or at least a major art market participant here, that the

1 The reference is to an encounter in 1973 between Robert Rauschenberg and taxi fleet owner Robert Scull, after Scull sold a large group of contemporary artworks, including works by Rauschenberg, from his collection at an auction at Parke Bernet in New York. The sale brought record prices. Reportedly, after the sale, Rauschenberg told Scull, "I've been working my ass off just for you to make that profit." Scull reportedly responded, "It works for you, too, Bob. Now, I hope you'll get even bigger prices," to which Rauschenberg responded by punching Scull in the stomach.

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auction houses are very transparent in their participation in the art market. I'm not going to defend everyone in the art market, but we need to look at the different segments of the art market before we cast aspersions that we all resemble the drug market. We don't.

Q What in the bill prevents criminal activity? For example, an artist bidding on their own work at auction to get the royalty profit.

A **TF:** Well if the artist bids up his own work—and this is an accusation made even at the auction houses—he or she runs the risk of buying his own work back. It makes no sense to me. They'll have to pay themselves the resale royalty. I doubt that's what they want.

Q I just had an extraordinary premonition of coming to an *IFAR Evening* perhaps in 10 or 15 years to find another Congressman, who, surprisingly, is keen to bring forward more legislation, who is pushing for the ADRR, the Art Dealer Resale Right, whereby the penurious heirs of dealers who have spent their time raising the profile of their artists and expanding their range suddenly find that they no longer have the benefit of the work that they've done and start demanding extra capital on the basis of that front. That's perhaps not quite a sensible question to ask, but I *would* ask one sensible question. In the UK, we charge artist resale rights on the buyer, and in France they charge it to the seller. How would we be doing it here?

Q **SF:** Do we know?

A **TF:** As far as I'm concerned, it would be on the seller who receives the fee from the buyer. As a matter of fact, it really affects both buyer and seller.

SF: So is it stated in the bill? I don't remember whether that was mentioned in the first bill.

A **TF:** No. It's not stated because I think it has its own internal logic. But I could be wrong, and if we needed to state it, we could state it.

Q That would seem to be quite a fundamental element—who will be charged this tax?

A **SC:** That's the subject of much dispute in Europe right now. You were correct about the EU. In France it has been litigated and has resulted in diametrically opposing decisions by the same appellate courts six months apart. It's now being considered by the highest court. We'll have to wait and see what their reaction is.

SF: I think this is a good spot to end. You can approach the speakers over wine outside. Please join me in thanking our five terrific speakers, who made news tonight.

• • •

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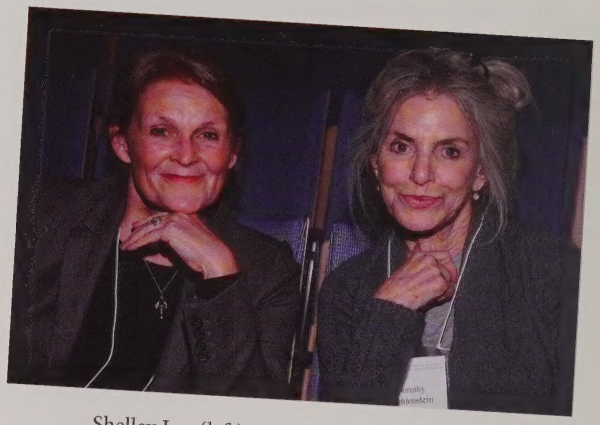
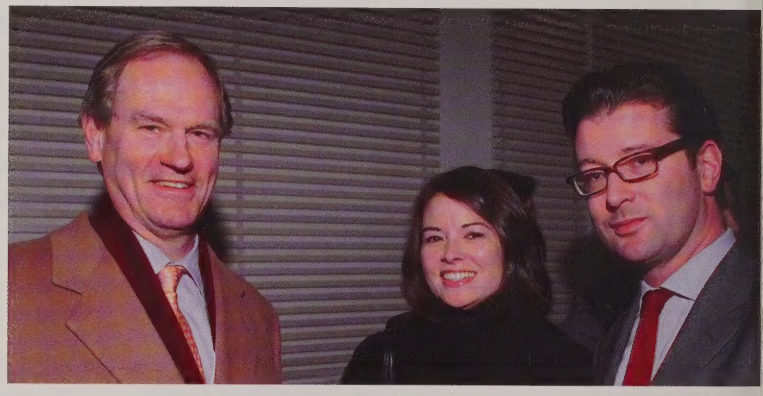


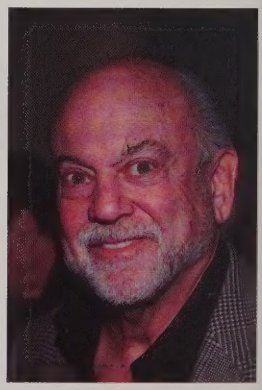
Shelley Lee (left) and Dorothy Lichtenstein

Janet Hicks (left) and Fernanda Meza.



Red Jahncke, Tanya Wells, and William O'Reilly.

Rose Stella, Ann-Laure Allehaut, John Cahill, Emmanuel Barbault, and Sandra Cobden.



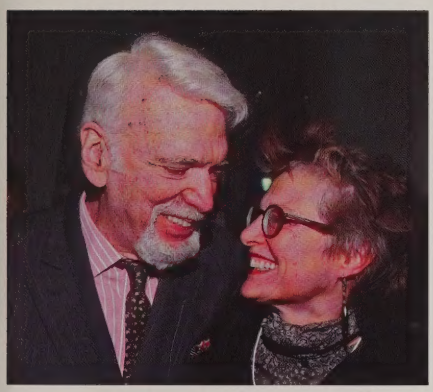
Errol Rudman.

Credit for these photos and all other images of speakers and guests at this program: Steven Tucker.

Hattula Moholy-Nagy (left) Nan Arcilesi.

Helen Hsu, Susan Davidson, Gina Guy, and David White.

Left to right: Robert Gottheim, Jerrold Nadler, and Bruce Lehman.



Theodore Feder and Bella Meyer.

Patricia Hambrecht.

Jerrold Nadler and Sharon Flescher, IFAR Executive Director.

Christina del Valle (left) and Helen Jessup.

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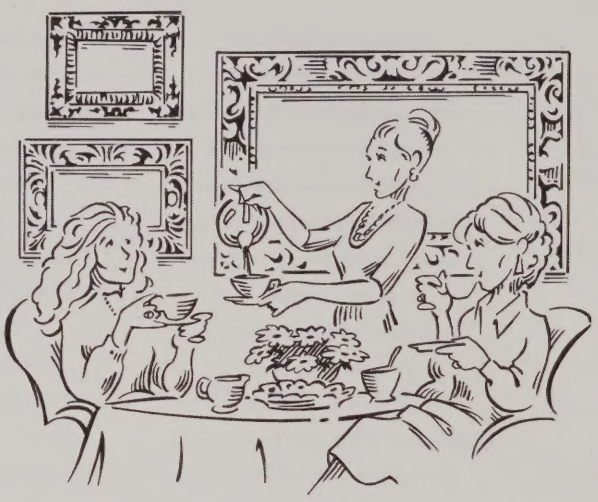

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PAINTINGS

126. **VERENA AUERSPERG-ROTTERDAM** (Austrian, contemporary). ***Eberhardt.*** Oil on canvas. 150.01 x 150.01 cm (approx. 59" x 59"). *L13.1070. Stolen in Vienna, Austria on September 16, 2013.

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127. **FRANK BRANGWYN** (Anglo-Welsh, 1867-1956). ***Nude Before a Dressing Table.*** Oil on canvas. 101.6 x 76.2 cm (40" x 30"). *L13.1025. Stolen from a private residence in Brighton, England on September 5, 2013.

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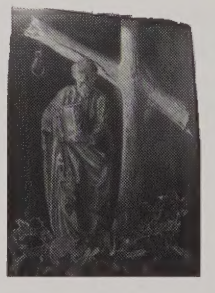
128. **KAREL LODEWIJK BRUCKMAN** (Dutch, 1903-1980). ***Eternity,*** 1957. Oil on canvas. 50.8 x 35.56 cm (20" x 14"). *L13.1015. Stolen from a gallery in London, England on October 8, 2010.



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129. **JACQUES FRANÇOIS CARABAIN** (Belgian, 1934-1933). ***Untitled Landscape.*** 1860. 60.96 x 30.48 cm (24" x 12"). *L13.1018. Stolen from Bonhams in London, England on March 24, 2011.

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130. **ROBERT SCOTT DUNCANSON** (American, 1821-1872). ***Panoramic Landscape.*** c. 1850-1870. Oil on unstretched canvas. *L13.814. Stolen from a gallery in Fairfield, ME on March 2, 2013.

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Numbering for the year 2012/2013 Cumulative Index of Stolen Art began with Vol. 14, nos. 1 and 2.

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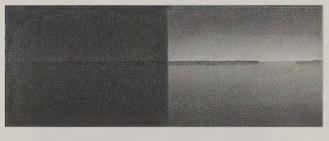
131. **MARISOL ESCOBAR** (French, born 1930). ***Portrait of Lenora Josefina Magalatta de Hernandez,*** 1953. Oil painting. 96.52 x 63.5 cm (38" x 25"). *L14.30. Stolen from a private residence in Caracas, Venezuela on August 1, 1975.

The following two paintings by **DOUGLASS FREED** (American, born 1944) were stolen from a private residence in Tulsa, OK on November 22, 2013. *L14.90. See also item no. 198 below:



132

132. ***Cerebral***, c. 2000-2014. Oil on canvas. 95.25 x 243.84 cm (37 ½" x 96").

133

133. ***Enter***, c. 2000-2014. Oil on canvas. 121.92 x 124.46 cm (48" x 49").

The following two paintings were stolen from a private residence in Hillsborough, CA on April 10, 2013. *L13.1221:

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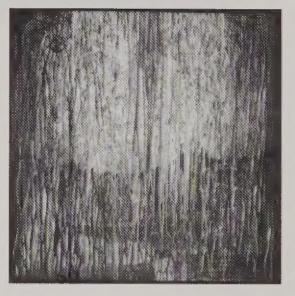
134. **CHARLES-FRANÇOIS DAUBIGNY** (French, 1817-1878). ***River Scene with Figure.*** Oil. 35.56 x 55.88 cm (14" x 22").

135

135. **GEORGE MORLAND** (English, 1763-1804). ***An Encampment.*** Oil on canvas. 45.72 x 60.96 cm (18" x 24").

The following two paintings were stolen from a private residence in Vancouver, B.C., Canada on November 28, 2012. *L14.107:

136. **DAVID GARRIOCH** (Canadian, contemporary). ***Straight to the Liver,*** c. 2001-2012. Automobile paint; oil paint; house paint; acrylic paint on canvas. 152.4 x 152.4 cm (60" x 60").



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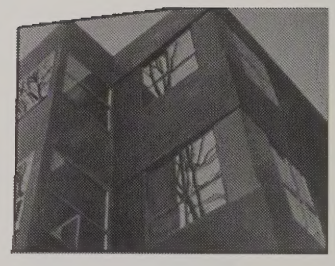
137. **SAM GOMEZ** (American, contemporary). ***Untitled.*** Painting. 121.92 x 182.88 cm (48" x 72").



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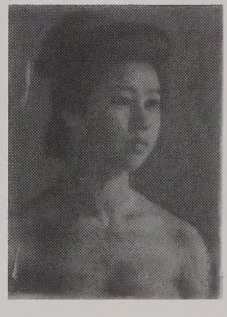
138. **LIZINKA-AIMÉE-ZOÉ DE MIRBEL** (French, 1796-1849). ***Portrait of a Lady,*** 1833. Oil. Ht: 9.4 cm (3.7"). *W13.75. Stolen from a museum in Wroclaw, Poland on September 1, 1939.

138

139. **GABRIELE MÜNTER** (German, 1877-1962). ***Red Poinsettia,*** 1956. Oil on cardboard. 24.51 x 13.51 cm (approx. 9 ¾" x 5 ¼"). *L13.1182. Stolen from a private residence in Unterschlessheim, Germany on December 31, 1991.

139

140. **TSUNE NAKAMURA** (Japanese, 1887-1924). ***Portrait of a Japanese nude*** (likely Sade Yamamoto). Oil on canvas. 33.02 x 25.4 cm (13" x 10"). *L13.876. Stolen from a private residence in Ann Arbor, MI on May 10, 2013.



140

STOLEN ART (cont.)

141

141. **Unknown Artist** (Dutch or Flemish, 17th century). ***The Lute Player.*** 45.01 x 37.01 cm (approx. 17 ¾" x 14 ½"). *L13.983. Stolen from a museum in Samedan, Switzerland on August 1, 2012.

The following five paintings were stolen from the Glasgow Museum of Transport, Coplawhill, Glasgow, Scotland between December 1977 and January 1, 1982. *L14.37:

142

DAVID TENIERS II (THE YOUNGER), Follower of (Flemish, 1610-1690):

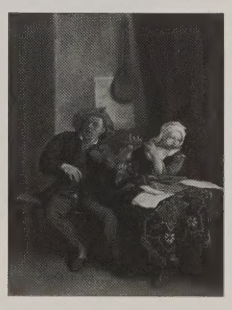
142. ***Landscape with Figures Before a Cottage.*** Oil on panel. 14.6 x 19.71 cm (approx. 5 ¾" x 7 ¾").

143

143. ***Landscape with Figures Before a Cottage, and a Windmill.*** Oil on panel. 14.6 x 19.71 cm (approx. 5 ¾" x 7 ¾").

144

144. ***St. Jerome in a Rocky Landscape: The Aged Saint; Dressed in Red.*** Oil on panel. 24.79 x 34.9 cm (approx. 9 ¾" x 13 ¾").



145

145. **CORNELIS DUSART** (Dutch, 1660-1704). ***A Man and a Woman Making Music.*** Oil on copper. 20.8 x 16 cm (approx. 8 ¼" x 6 ¼").

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146. **A. GRIMSON** (English). ***Landscape.*** Oil on canvas. 20.29 x 28.6 cm (approx. 8" x 11 ¼").

146

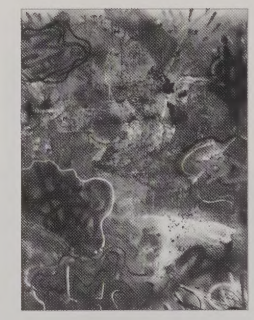
The following four paintings by **TORRICK ABLACK** (American, born 1965) were stolen in London, England on February 15, 2012. *L13.948.

147. ***Untitled Abstract Painting,*** 2010. Spray paint and acrylic on canvas. 219.99 x 280.01 cm (approx. 86 ½" x 110 ¼").

148. ***Untitled Abstract Painting,*** 2010. Spray paint and acrylic on canvas. 219.99 x 280.01 cm (approx. 86 ½" x 110 ¼").

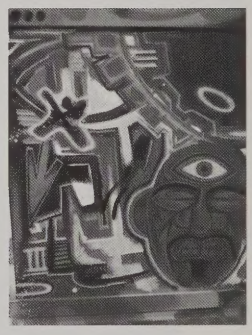
149. ***Untitled Abstract Painting,*** 2010. Spray paint and acrylic on canvas. 219.99 x 280.01 cm (approx. 86 ½" x 110 ¼").

150. ***Untitled Abstract Painting,*** 2010. Spray paint and acrylic on canvas. 219.99 x 280.01 cm (approx. 86 ½" x 110 ¼").



148

150



147

149

STOLEN ART (cont.)

151

The following two paintings by **NORVAL H. MORRISSEAU** (Canadian, 1932-2007) were stolen from a private residence in Tiny, ON, Canada on December 18, 2013. *L13.1353:

151. ***Inspiration of Shaman Painter, His Family.*** Acrylic on canvas. 243.84 x 91.44 cm (96" x 36").

152

152. ***Shaman with Two Children.*** Acrylic on canvas. 243.84 x 91.44 cm (96" x 36").

The following two paintings were stolen from a private residence in San Giuliano Terme in Rigoli, Italy on August 15, 2013. *L13.818:

153

153. **MAESTRO DEL PAPPAGALLO** (Italian, active 1500-1550). ***The Virgin and the Child in a Landscape.*** Oil on oak panel. 86 x 72.01 cm (approx. 33 ¾" x 28 ½").

154

154. **CIRCLE OF PIETER BRUEGHEL THE YOUNGER** (Flemish, 16th century). ***Le Sette Opere di Misericordia.*** Oil on panel. 68.99 x 84 cm (approx. 27 ¼" x 33").

STOLEN ART ALERT®

The following 42 paintings (nos. 155-196) were among 110 works stolen from a private residence in San Pedro Garza Garcia, Mexico on September 27, 2010. *L13.1102:

155. **JORGE ALZAGA** (Mexican, 1938-2010). ***Mujer en la ventana.*** Oil on canvas. 120 x 100 cm (approx. 47 ¼" x 39 ½").

155

156. **MANUEL ANORO** (Spanish, born 1945). ***La una se llama Lola.*** Oil on canvas. 89 x 116 cm (approx. 35" x 45 ½").

156

DR. ATL (GERARDO MURILLO) (Mexican, 1875-1964):

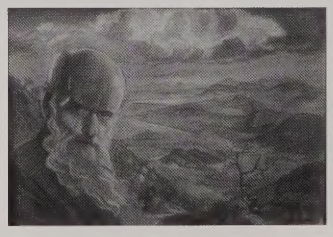
157. ***Los Volcanes, Valle de Mexico,*** 1920. Oil on canvas. 108 x 200 cm (approx. 42 ½" x 78 ¾").

157

158. ***Paisaje aereo, Valle de Mexico,*** 1950. Oil on masonite. 61 x 88.5 cm (approx. 24" x 34 ¾").

158

159. ***Untitled (Autorretrato).*** Oil on masonite. 37 x 50 cm (14.57" x 19.68").

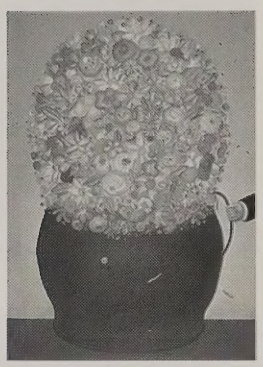


159

160. **CUNDO BERMÚDEZ** (Cuban, 1914-2008). ***Untitled (Family).*** Oil on canvas. 53.5 x 63.5 cm (approx. 21" x 25").

160

STOLEN ART (cont.)



161

161. **FERNANDO BOTERO** (Colombian, born 1932). ***Florero,*** 1976. Oil on canvas. 162 x 113.5 cm (approx. 63 ¾" x 44 ½").

162

MIGUEL CABRERA (Mexican, 1695-1768):

162. ***Ave Maria Virgen Pastora.*** Oil on canvas. 124 x 93 cm (approx. 48 ¾" x 36 ½").

163

163. ***Santa Prisca.*** 18th century. Oil on canvas. 100 x 73.5 cm (approx. 39 ¼" x 29").

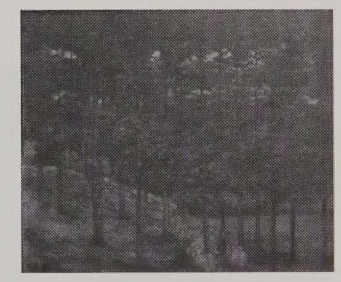
164

164. ***La Sagrada Familia.*** 1765. Oil on canvas. 60.81 x 84 cm (approx. 24" x 33").

STOLEN ART ALERT®

JOAQUÍN CLAUSELL
(Mexican, 1866-1935):

165. ***Camp Michoacano con ovejas.***
Oil on canvas. 60 x 70 cm
(approx. 23 ½" x 27 ½").



165

166. ***Paisaje.*** Oil on canvas.
44.5 x 32 cm (approx. 17 ½" x 12 ½").

166

167. ***Xochimilco.*** Oil on canvas.
20.5 x 32 cm (approx. 8" x 12 ½").

167

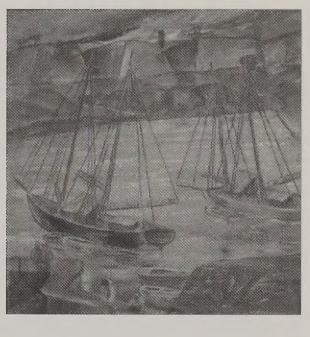
168. **FRANCISCO CORZAS** (Mexican, 1936-1983). ***Perfil de Mujer con ojo azul,*** 1983. Oil on canvas.
120 x 100 cm (approx. 47 ¼" x 39 ½").

168

169. **ISABEL DE GANAY**
(French, born 1960). ***Untitled (Pont Japonais à Giverny).***
Oil on canvas. 89.5 x 116.5 cm
(approx. 35 ¼" x 45 ¾").

169

STOLEN ART (cont.)

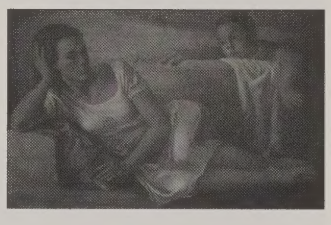


170

170. **CARLOS ENRIQUEZ** (Cuban, 1900-1957). ***La Lola,*** 1955. Oil on canvas. 52 x 49 cm (approx. 20 ½" x 19 ¼").

171

171. **ROBERTO FABELO** (Cuban, born 1951). ***Pequeña Fantasia,*** 1994. Oil on canvas. 14 x 28 (approx. 5 ½" x 11?).

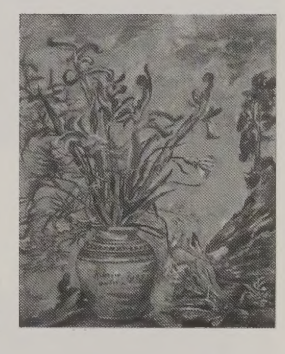


172

172. **JESÚS GUERRERO GALVÁN** (Mexican, 1910-1973). ***Mujer recostada,*** 1940. Oil on canvas. 112.5 x 71 cm (approx. 44 ¼" x 28").

173

173. **DAVID GARZA** (American, contemporary). ***Animales esperando el autobus,*** 2008. Oil on canvas. 125 x 125 cm (approx. 49 ¼" x 49 ¼").



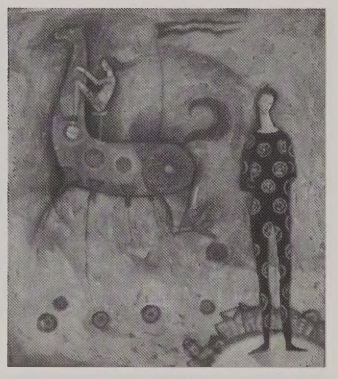
174

174. **FEDERICO CANTÚ GARZA** (Mexican, 1907-1989). ***Bodegon con lirios,*** 1948. Oil on canvas. 75.5 x 60 cm (approx. 24 ¾" x 23 ½").

CARLOS GUZMÁN
(Mexican, Cuban, born 1970):

175. ***El Gran Domador,*** 1998.
Oil on canvas. 92 x 80.5 cm
(approx. 36 ¼" x 31 ¾").

176. ***Si Cae una Estrella,*** 1998.
Oil on canvas. 99 x 75.5 cm
(approx. 39" x 29 ¾").



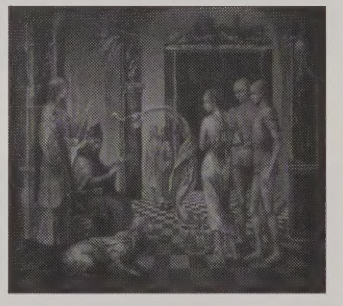
175

176

JUAN REYES HARO
(Mexican, born 1941):

177. ***Cavernas de los antepasados.***
Oil on canvas. 110 x 120
(approx. 43 ¼" x 47 ¼").

178. ***Untitled (Dialogos),*** 2002.
Oil on canvas. 110 x 120
(approx. 43 ¼" x 47 ¼").



177

178

179. **WILFREDO LAM** (Cuban, 1902-1982). ***Sagua la Grande.***
See photo on inside back cover.

180. **FULGENCIO LAZO** (Mexican, contemporary). ***Plasticas Nocturnas,*** 1983. Oil on canvas. 135 x 160 cm
(approx. 53 ¼" x 63").

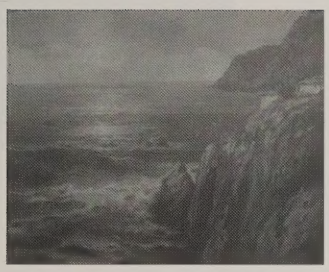
180

STOLEN ART ALERT®

STOLEN ART (cont.)

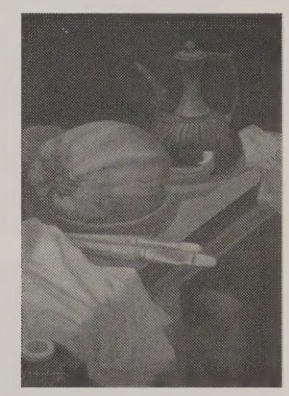
181

181. **ALBERT MALET** (French, 1912-1986). ***NM Aux Oranges.*** Oil on canvas. 55.5 x 46 cm (approx. 21 ¾" x 18").



182

182. **GUILLERMO GOMEZ MAYORGA** (Mexican, 1890-1962). ***Acantilado,*** 1930. Oil on masonite. 80 x 100 cm (approx. 31 ½" x 39 ¼").



183

183. **LUIS NISHIZAWA** (Mexican, born 1918). ***Bodegon,*** 1987. Oil on canvas. 100 x 56.5 cm (approx. 39 ¼" x 22 ¼").

ARMANDO GARCÍA NÚÑEZ (Mexican, 1883-1965):

184

184. ***Bosque.*** Oil on canvas. 22 x 30 cm (approx. 8 ½" x 11 ¾").

185. ***Desnudo.*** Oil on canvas. 160 x 70 cm (approx. 63" x 27 ½").

185

STOLEN ART ALERT®

JUAN O'GORMAN
(Mexican, 1905-1982):

186. ***Flores imaginarias,*** 1944.
Oil on canvas. 65 x 51 cm
(approx. 25 ½" x 20").

186

187. ***Paisaje Erosionado,*** 1964.
Oil on canvas. 43 x 58 cm
(approx. 17" x 22 ¾").

187

188. ***Paisaje de Patzcuaro,*** 1948.
Oil on canvas. 45 x 55.5 cm
(approx. 17 ¾" x 22").

188

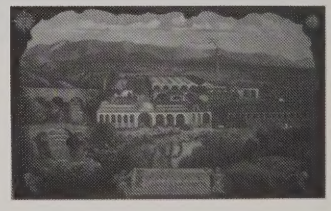
189. ***Vista Panoramica de Guanajuato y Michoacan,*** 1948.
Oil on canvas. 43 x 110 cm
(approx. 17" x 43 ¼").

189

190. **FIDELIO PONCE DE LEÓN**
(Cuban, 1895-1949). ***Leccion de Piano.*** Oil on canvas.
189.5 x 122.5 cm (approx.
74 ½" x 48 ¼").

190

191. **HORACIO RENTERIA ROCHA**
(Mexican, 1912-1972). ***Hacienda de San Antonio del Puente.***
Oil on canvas. 125 x 200 cm
(approx. 49 ¼" x 78 ¾").

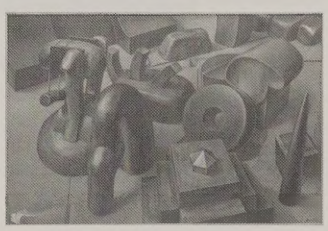


191

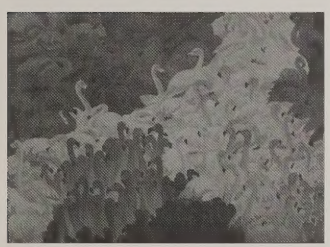
STOLEN ART (cont.)

192

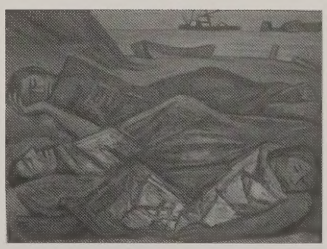
193



194



195



196

DAVID ALFARO SIQUEIROS (Mexican, 1896-1974):

192. ***Mural del Castillo de Chapultepec*** (fragment). Oil on canvas. 121 x 169 cm (approx. 47 ½" x 66 ½").

193. ***Untitled (Mountains),*** 1965. Oil on canvas. 67.5 x 122 cm (approx. 26 ½" x 48").

194. **EDUARDO TAMARIZ** (Mexican, born 1945). ***Transmutaciones,*** 2007. Oil on canvas. 156 x 240 cm (63" x 95").

195. **ISMAEL VARGAS** (Mexican, born 1945). ***Flamingos, Rio Langosta.*** Oil on canvas. 86 x 131 cm (approx. 33 ¾" x 51 ½").

196. **ALFREDO ZALCE** (Mexican, 1908-2003). ***Siesta,*** 1987. Oil on canvas. 91.01 x 121.01 x 2.49 cm (approx. 35 ¾" x 47 ½").

THEFTS FROM MUSEO NACIONAL DE BELLAS ARTES, HAVANA

As *IFAR Journal* went to press, we learned about the thefts of 70 paintings from the collection of the Museo Nacional de Bellas Artes in Havana, including the four paintings below. So far, twelve of the works have surfaced in Miami. We will publish more information with all the images in the next issue of the *Journal.*

LEOPOLDO ROMAÑACH (Cuban, 1862-1951). ***Paisaje con animal.***

JUAN GIL GARCÍA (Cuban, 1879-1932). ***Cocos y Naranjas.*** Oil on canvas. 50.5 x 71.

ARMANDO GARCÍA MENOCAL (Cuban, 1868-1942). ***Retrato de Dama.*** Oil on canvas.

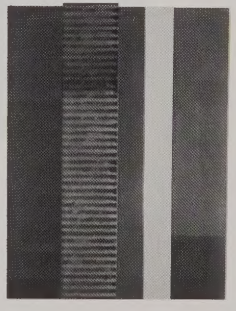
JOSÉ MIJARES (Cuban, 1921-2004). ***Mujer con flor.*** Oil on canvas. 74 x 56.

MIXED MEDIA

197. **TADDEO DI BARTOLO** (Italian, c. 1363-1422). ***Crucifixion (Christ surrounded by two flying angels.)*** See photo on inside back cover.

198. **STEVE JOY** (British, contemporary). ***Cathedral Silvercane.*** Mixed media over gold on panel. 152.4 x 119.38 cm (60" x 47"). *L14.90. Stolen from a private residence in Tulsa, OK on November 22, 2013. See also item nos. 132, 133 above.

199. **CLAIRE ANNE KHALIL** (American, born 1944). ***Venice – et cum spiritu tuo,*** 1993. Oil on canvas with gold leaf. 200.66 x 271.78 cm (79" x 107"). *L13.1347. Stolen from a private residence in Marina del Ray, CA on October 7, 2013.



198

199

STOLEN ART ALERT®

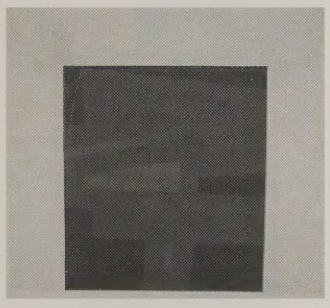
STOLEN ART (cont.)

WORKS ON PAPER

200

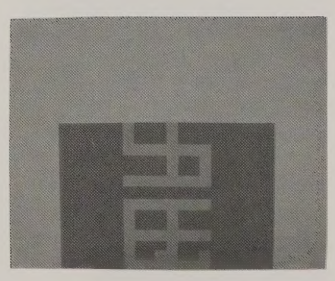
200. **MAX BEERBOHM** (English, 1872-1956). ***Andre Raffalovich.*** Pencil drawing. 27 x 19.99 cm (approx. 10 ½" x 7 ¾"). *L13.1274. Stolen from a private residence in London, England on July 30, 2008.

The following two works by **ROBYN DENNY** (English, born 1930) were stolen from the Islington Contemporary Art & Design Fair in London, England on March 1, 2012. *L13.670:



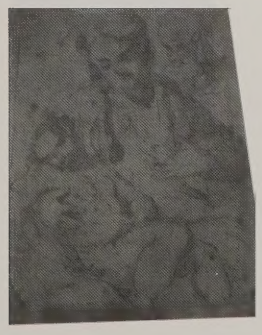
201

201. ***Folder 5A (11),*** 1966. Gouache on paper. 555.91 x 69.9 cm (approx. 22" x 27 ½").



202

202. ***Folder 5A (12),*** 1966. Gouache on paper. 55.91 x 69.9 cm (approx. 22" x 27 ½").



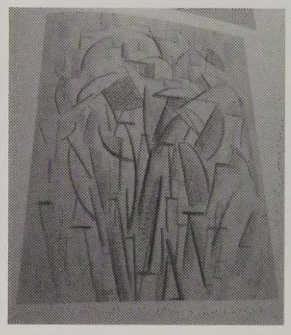
203

203. **PERINO DEL VAGA** (Italian, 1501-1547). ***Untitled.*** Drawing on paper. 15.24 x 10.16 cm (6" x 4"). *L13.1015. Stolen from a gallery in London, England on October 8, 2010.

204. **KEVIN HENKES** (American, born 1960). ***Penny and Her Marble,*** 2013. Watercolor on paper. 20.32 x 25.4 cm (8" x 10"). *L13.1226. Stolen from a New York gallery on October 23, 2013.

204

205. **PIET MONDRIAN** (Dutch, 1872-1944). ***Untitled*** (also called Eucalyptus or Sunflower), 1912. Pencil or charcoal on paper. 65.4 x 49.53 cm (25 ¾" x 19 ½"). *L13.913. Stolen from a New York gallery between 2004 and April 30, 2012.

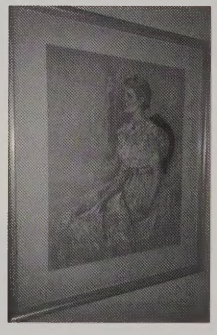


205

206. **LAUREN SEIDEN** (American, born 1981). ***Wrap Raw 4,*** graphite on crumpled paper on a wooden stretcher. 101.6 x 76.2 cm (40" x 30"). *L14.96. Stolen from the Miami Art Fair, Miami, FL on December 9, 2013.

206

207. **BRANTLEY SMITH** (American, 1874-1947). ***Portrait of a Young Lady,*** 1940. Pastel. 55.88 x 43.18 x 2.54 cm (22" x 17"). *L13.1094. Stolen from a private residence in Canyon Lake, CA on January 1, 1987.



207

STOLEN ART (cont.)

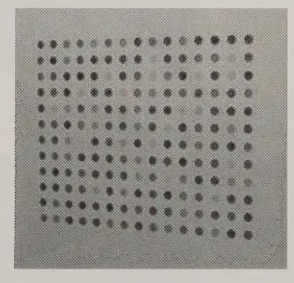
PRINTS, ETCHINGS, LITHOGRAPHS

208

208. **PIERRE-CHARLES CANOT** (French, 1710-1777). ***A Southeast View of the City of New York in North America,*** c. 1763. Engraving on paper after Howdell. *L13.1277. Stolen from a private club in New York on July 3, 2013.

209

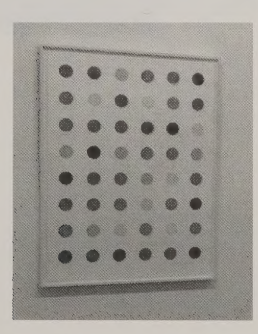
209. **JOHN HOYLAND** (English, 1934-2011). ***Xingu,*** 1981. Screenprint on paper. 147.29 x 114.91 cm (approx. 58" x 45 ¼"). Ed no. 57/65. *L13.875. Stolen from a storage facility in Hawthorne, CA on July 29, 2013.



210

The following two works by **DAMIEN HIRST** (English,) were stolen from a gallery in London, England on December 9, 2013. *L13.300:

210. ***Oleolysarcosine,*** 2008. Etching on paper. 67.01 x 89 cm (approx. 26 ½" x 35"). Signed l/r. Unique. Serial no. TAG 6000.



211

211. ***Pyronin Y,*** 2005. Etching on paper. 103.4 x 116.1 cm (approx. 40 ¾" x 45 ¾"). Signed l/r. Ed no. 34/65. Serial no. TAG 5982.

STOLEN ART ALERT®

The following nine works by **LE CORBUSIER (CHARLES-ÉDOUARD JEANNERET-GRIS)** (Swiss, 1887-1965) were stolen in transit between Brescia and Milan, Italy on August 26, 2013: *L13.894:

212 (a and b). ***Portfolio with 10 etchings / "petite confidences"*** 1957/60. Rhodoid on paper. 56.79 x 45.69 cm (approx. 22 ¼" x 18"). Ed. no. 7/125 Kuns.

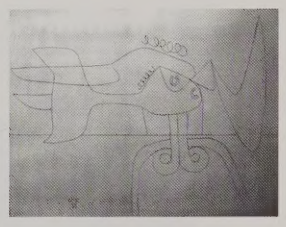
212 (a and b)

213. ***Icône 4,*** 1964. Lithograph. Ed no. 39/150. 54 x 72.01 cm (approx. 21 ¼" x 28 ½").

213

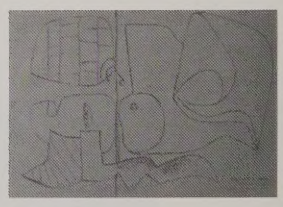
214. ***La Mer,*** 1963. Etching on paper. 56.79 x 76 cm (approx. 22 ¼" x 30"). Ed. no. 18/75. *L13.1133:

214



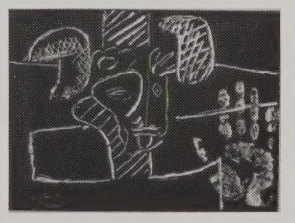
215. ***Le masque et la pigne du pin,*** 1965. Etching. 50.19 x 65.3 cm (approx. 19 ¾" x 25 ¾"). Ed. no. 75/110.

215



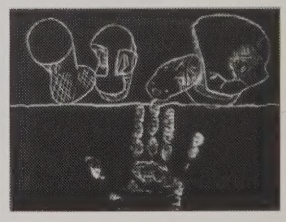
216. ***Main Le Corbusier, Taureau,*** 1964. Etching. Ed. no. 64/185.

216

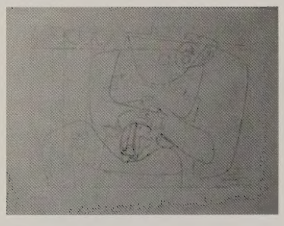


217. ***Main Le Corbusier et pierres,*** 1964. Etching. 45.31 x 56.79 cm (approx. 17 ¾" x 22 ¼"). Ed. no. 65/185.

217



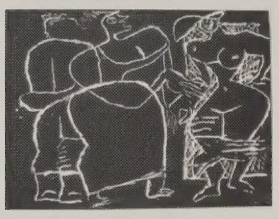
STOLEN ART (cont.)



218

218. ***Naissance du Minotaure,*** 1956/1965. Etching. 50.19 x 65.3 cm (approx. 19 ¾" x 25 ¾").
Ed. no. 47/110.

219. ***Portfolio "serie panurge,"*** 1961/62. See photo on inside back cover.

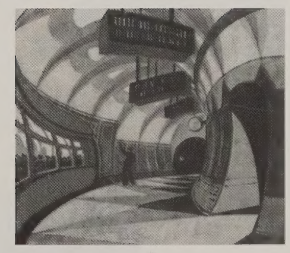


220

220. ***Trois femmes,*** 1942/1964. Etching. 45.11 x 55.91 cm (approx. 17 ¾" x 22"). Ed. no. 27/185.

The following two works were stolen in Miami, FL on December 9, 2013. *L13.1351:

221. **PAUL KLEE** (Swiss, 1879-1940). ***The Witch with the Comb,*** 1922. See photo on inside back cover.



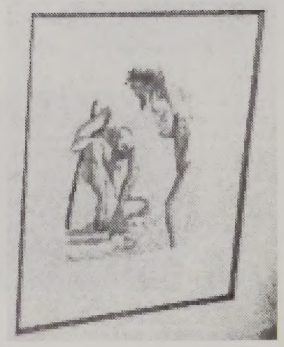
222

222. **CYRIL POWER** (English, 1872-1951). ***The Tube Station,*** ca. 1932. Linocut on thin Oriental laid paper. 26.04 x 29.53 cm (approx. 10 ¼" x 11 ½"). Ed no. 21/60. Inscribed in pencil: USA ed.

The following works by **DALÍ, DÜRER,** and **REMBRANDT** were stolen from a private residence in Marion, MT on September 30, 2013. *L13.1037:

SALVADOR DALÍ (Spanish, 1904-1989).

223. ***Divine Comedy – Purgatory 7 – Princes of the Blossoming Valley,*** 1960. Color engraving on Rives wove paper. Signed by hand l/r margin. With a Jean Estrade blind stamp. 24.76 x 17.78 cm. (approx. 89 ¾" x 7").



223

224. ***Divine Comedy – Inferno 7 – The Avaricious and the Prodigal,*** 1960. Color engraving on Rives wove paper. Hand signed l/r margin. With a Jean Estrade blind stamp. 24.76 x 17.78 cm (approx. 9 ¾" x 7"). (Image not shown.)

225. ***Divine Comedy – Paradise 7 – Dante's New Doubt,*** 1960. Colored engraving on Rives wove paper. With Jean Estrade's blind stamp. 24.76 x 17.78 cm (approx. 9 ¾" x 7"). (Image not shown.)

226. **ALBRECHT DÜRER** (German, 1471-1528). ***The Presentation of the Virgin in the Temple*** (from The Life of the Virgin), 1504. Woodcut on heavy laid paper. 29.84 x 20.96 cm (approx. 11 3.4" x 8 ¼"). Signed in the plate with the artist's monogram l/r.

226

STOLEN ART (cont.)

REMBRANDT HARMENSZ. VAN RIJN (Dutch, 1606-1669):

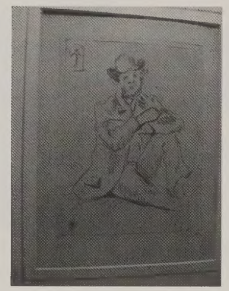
227

227. ***The Angel Appearing to the Shepherds,*** 1634. Drypoint etching on heavy laid paper. Signed and dated in the plate. Rembrandt f. 1634, lower right. Shield with a Paris 1680 watermark. 25.7 x 21.59 cm (approx. 10 ¼" x 8 ½").

228

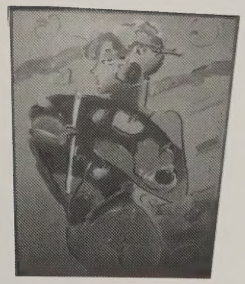
228. ***The Death of the Virgin,*** 1639. Etching and drypoint on laid paper. Signed in the plate Rembrandt f. 1639 on the l/l. 39.37 x 31.12 cm (approx. 15 ½" x 12 ¼").

The following works were stolen from a gallery in London, England on October 8, 2010. *L13.1015:



229

229. **PAUL CÉZANNE** (French, 1839-1906). ***Portrait of the painter Armand Guillaume.*** Etching. Ed. no. 3.50.



230

PETER MAX (American, born 1937):

230. ***Fan Dancer,*** 2000. Serigraph. 101.6 x 76.2 cm (40" x 30").

231

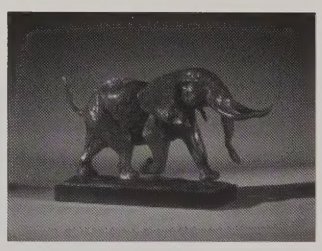
231. ***Untitled,*** 1998. Serigraph. 1.44 x 111.76 cm (36" x 44").

232

232. **REMBRANDT HARMENSZ. VAN RIJN** (Dutch, 1606-1669). ***Hog.*** Etching. 35.56 x 50.8 cm (14" x 20").

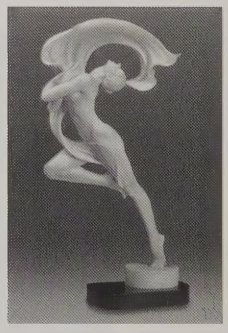
SCULPTURE

233. **MARK CORETH** (English, born 1958). ***Elephant,*** 1995. Bronze. 15.24 x 17.78 x 12.7 cm (6" x 7" x 5"). *L13.1170. Stolen from a private residence in Ansty, England on June 14, 2013.



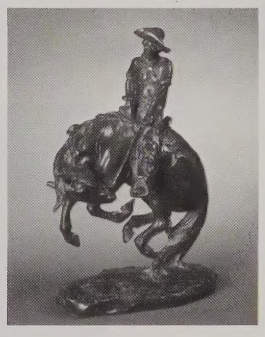
233

234. **GAYLORD HO** (Taiwanese, born 1950). ***Spirit Dance.*** Parian II. 20.5 x 9.5 x 35 cm (approx. 8" x 3 ¾" x 12 ¾"). *L13.1273. Stolen from a gallery in Denver, CO on November 18, 2013.



234

235. **CHARLES H. HUMPHRISS** (American, 1867-1934). ***Cowboy on Bucking Horse (Bucking Bronco),*** 1905. Bronze. 26.4 x 17.78 x 10.16 cm (110 ¼" x 7" x 4"). Inscribed: CH Humphriss/1905/Copyright. Stamped: Roman Bronze Works/N.Y. 1905. numbered: 1. *L13.1072. Stolen from a gallery in Jackson Hole, WY on July 17, 2013.



235

The following two works by **DANIEL LUDWIG** (American, born 1959) were stolen in Versailles, KY on August 8, 2013. *L13.830:

236. ***Woman with Hands on Face,*** 2000. Bronze. 100.33 x 44.45 x 45.08 cm (39 ½" x 17 ½" x 17 ¾").

236

237. W***oman with Arms over Head,*** 2002. Bronze. 107.95 x 44.45 x 45.58 cm (approx. 42 ½" x 17 ½" x 17 ¾").

237

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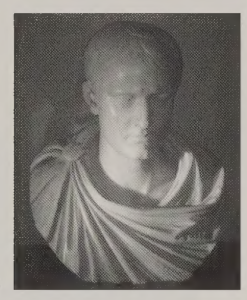
STOLEN ART (cont.)



238

238. **Unknown Artist.** ***Bust of Napoleon,*** 1830. White marble. 53.01 x 48.01 cm (approx. 20 ¾" x 19"). *L13.1219. Stolen from a gallery in London, England on August 7, 2013.

239

239. **Unknown Artist.** ***Horse*** (20th century). Bronze. 30 x 45.01 x 10.01 cm (11 ¾" 17 ¾" x 4"). *L13.1097. Stolen in transit in London, England on October 23, 2011.

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  Vol. 13, nos. 1&2 *(What Frames Can Tell Us,* double issue), $20; no. 3, $10; no. 4, $10
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RECOVERED ART

PAINTINGS

5. **ANDREAS ACHENBACH** (German, 1815-1910). ***Scandinavian Landscape,*** 1837. Confiscated by the Nazis and sold at Lempertz Auction House in Cologne, Germany in 1937. Recovered at a different auction house in Cologne in the spring of 2013 and returned to the heirs of Montreal art dealer Max Stern in October.

5

6. **EUGÈNE DELACROIX** (French, 1798-1863). ***The Arabs of Oran,*** 1833. Stolen from a gallery in Paris in November 2012. Recovered in Belgrade in 2013.

6

7. **ALEXANDER O. LEVY** (German/American, 1881-1947). ***Woman in a Black Kimono,*** 1915. See photo on inside back cover.

8. **PIERRE-AUGUSTE RENOIR** (French, 1841-1919). ***Paysage Bords de Seine,*** 1879. Oil painting. Stolen from the Baltimore Museum of Art in 1951. Surfaced in Virginia in 2012; returned to the museum in January 2014. See story in News & Updates, p. 20.

8

**Numbering for the year 2012/2013 Cumulative Index of Recovered Art began with Vol. 14, nos. 1 and 2.*

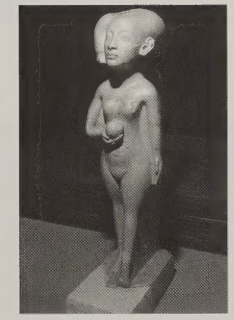
STOLEN ART ALERT®

CHINESE ART

9

9. ***Tripod Covered Censer (Incense Burner)*** (Chinese, Qing Dynasty, 18th century). Jadeite. Ht: 16.5 cm (6 ½"). *N79.252. R1154. Stolen from Harvard's Fogg Art Museum on November 25, 1979. Recovered with the help of the ALR in 2009 and returned to the Harvard Art Museums by U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations on January 21, 2014.

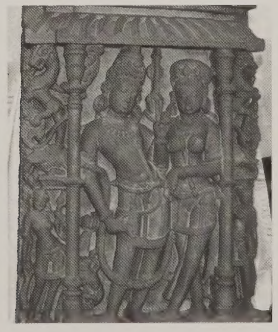
EGYPTIAN ANTIQUITIES



10

10. ***Ankesom, a Daughter of the Pharoah Akhenaten*** (Egyptian, 14th century BC). Limestone. Ht: 32 cm. (approx. 13"). Looted from the Mallawi City Museum in Al-Minya, Egypt during political upheaval in August 2013. Recovered by the Tourism and Antiquities Police in Egypt in December 2013.

INDIAN ART



11

11. ***Vishnu-Lakshmi*** (Indian, 11th-12th century). Sandstone. Wt: 350 lbs. Stolen along with a sandstone Vishnu-Parvati sculpture from the Gadgach Temple in Atru, Rajasthan, India in 2009. Both items were returned to the Indian Consulate by U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations in New York on January 14, 2014 along with a third sculpture, a black sandstone Bodhisattva from the same period that was stolen from a temple in either Bengal or Bihar.

STOLEN ART ALERT®

RECOVERED ART (cont.)

PERSIAN ANTIQUITIES

12. ***Achaemenid Bas-Relief panel*** (Persian). Stolen from the Montreal Museum of Fine Arts in 2011. Recovered in Edmonton, Alberta, Canada and returned to the museum in February 2014.

12

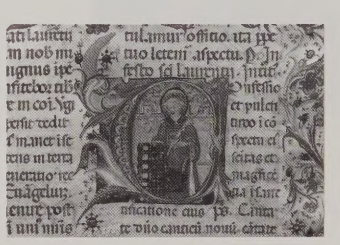
ROMAN ANTIQUITIES

13. ***Household God (Lar)*** (Roman). Bronze. Ht: 16.51 cm (6 ½"). *C.06.146. Stolen from the Rheinisches Landesmuseum Trier in Germany in April 2006. Recovered by police in The Netherlands in 2014.

13

BOOKS, MANUSCRIPTS

14. ***Page 212 of the Missal of Ludovico da Romagnano (the San Lorenzo)*** (Italian, 15th century). Colored ink on vellum. Stolen from the archives of the Archdiocese of Turin in 1990. Recovered by the U.S. Department of Homeland Security in Tampa, FL in March 2012.



14

MUSICAL INSTRUMENTS

15. **ANTONIO STRADIVARI** (Italian, 1644-1737). ***"Lipinski Stradivarius" violin,*** 1715. Two-piece violin: front side is mahogany-colored wood; back side is blond wood with unique striations. Length: 35.89 cm (approx. 14 ¼"). *L14.151. Stolen while on loan to violinist Frank Almond of the Milwaukee Symphony Orchestra after a concert at Wisconsin Lutheran College in Milwaukee, WI on January 27, 2014 when the thief attacked the concertmaster with a stun gun. Recovered by police in Milwaukee on February 5, 2014.

15

STOLEN ART ALERT®

2013 CUMULATIVE INDEX OF STOLEN ART

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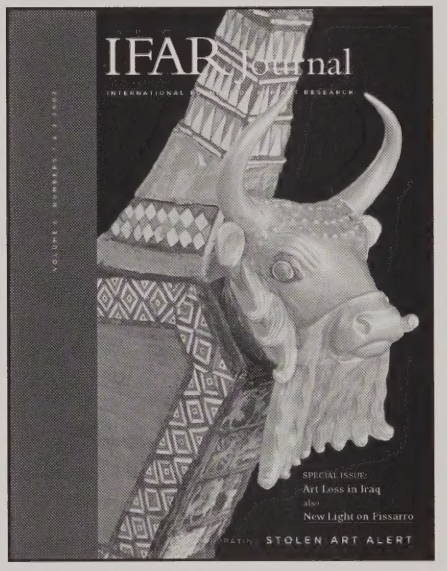

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STOLEN ART

PAINTINGS

179. **WILFREDO LAM** (Cuban, 1902-1982). ***Sagua la Grande.*** Oil on canvas. 60.5 x 103 cm (approx. 23 ¾" x 40 ½"). *L13.1102. Stolen from a private residence in San Pedro Garza Garcia, Mexico on September 27, 2010. *L13.1102. See also ítems nos. 155-178 and 180-196, this issue.

MIXED MEDIA

197. **TADDEO DI BARTOLO** (Italian, c. 1363-1422). ***Crucifixion (Christ surrounded by two flying angels).*** Tempera on wood panel with gold background. Part of a predella. 28.5 x 47.4 cm (approx. 11 ¼" x 18 ½"). *L13.1181. Stolen in transit in Florence, Italy on November 5, 2013.

PRINTS, ETCHINGS, LITHOS

219. ***Portfolio "serie panurge,"*** 1961/62. Rhodoid etchings/lithography. 56.49 x 45.49 cm (approx. 22 ¼" x 18"). 1 sheet is signed. 8 sheets, 3 with text and 5 with black and white compositions. One of nine works by **LE CORBUSIER** (Swiss, 1887-1965) stolen in transit between Brescia and Milan, Italy on August 26, 2013. *L13.894. See also item nos. 212-220, this issue.

221. **PAUL KLEE** (Swiss, 1879-1940). ***The Witch with the Comb,*** 1922. Lithograph on cream wove paper. 31.12 x 21.27 cm (12 ¼" x 8 ⅜"). Ed. no. 9/14. Kornfeld 86 11Ab. *L13.1351. Stolen in Miami, FL on December 9, 2013. See also item no. 222, this issue.

RECOVERED ART

PAINTINGS

7. **ALEXANDER O. LEVY** (German/American, 1881-1947). ***Woman in a Black Kimono,*** 1915. One of 14 paintings stolen from Shannon Fine Arts in Orange, CT in 1991. Recovered in October 2013.

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